United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

75-1354

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

service

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

Docket No. 75-1354

ALFONSO PINEROS,

Defendant-Appellant.

On appeal from the United States District . Court for the Eastern District of New York.

APPENDIX FOR THE DEFENDANT-APPELLANT



IRA LEITEL

Attorney for Defendant-Appellant 188 Montague Street Brooklyn, New York 11201 (212) 624 - 5775 PAGINATION AS IN ORIGINAL COPY

		TITLE OF CASE	1.8	6-6-1	. 63 2	OSTANTI	
	THE UN	TTED STAT	ES			MITTE	,
PS.				For U. W. GUC CHI		·	
	ALFONSO	PINEROS	a/k/a	"Gilberto"			
				k/a "Georgie"			
	a/k/a	Jorge Zur	niga"				

Cra					For Defendant:	PINEROS	
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3 1 4 4			· · · · · ·		188 Montague Street		
				•	Brocklyn, N.Y. Suite		ite 4
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	BSTRACT OF COSTS	AMOUNT	DATE		EIVED AND DISBUR		Γ
Fino,			0/3/75	Notice of a	paga 1 (No. 7)	RECEIVED	DISBUI
Clerk,	The second secon			(PINEROS)	phear (No k	(89	-
Marshal.							
Attorney,	FOR THE PARTY OF T						
Commissio	mer's Court,				- A	İ	
Witnesses,							
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are enterin		= [1				
DATE	PROCEEDINGS						
-22-74	Before JUDD, J - Indictment filed.						
-11-74	The state of the s						
	taken by the U.S.Marshal for the Eastern Dist of NY to the U.S. Medical Center, Springfield, Mo. there to be examined by at least one qualified psychiatrist for the purpose of determining if the deft is so mentally ill or otherwise incompetent as to be whable						
14							
-							
10 P	to understand the					A ST. SOLVE STREET AND STREET STREET, ST.	- brings out - tellenment
	a report of such						
	John Boyd V, and Allan Rubin, Esq., further ordered that this examinat						
	shall be for a period not exceeding 90 days and that upon its						
	Completion the de	ft shall	he ret	by the U.S.	Marshol to	Foderal	Det.

74 CR 47

Proceedings	CLERK	's PEES
	PLAINTIFF	DEFENDANT
74 Before COSTANTINO, J Case called- Defts and counsels	present-	Dect
RODRIGUEZ arraigned and enters a plea of no: guilty-	on oral mo	ion of
deft Pineros whether deft is incompetent to stand tri	al- motion	granted
Case set down foretrial on 3-18-74		
-74 Before COSTANTINO J - case called - deft & atty Mr.		
Interpreter present Mr. Gutman is relieved as atty	or deft RO	DRIGUEZ.
adjd to Mar. 20, 1974.		
Before COSTANTINO J - case called - deft RODRIGUEZ p	resent with	1
interpreter Maria Cardenas - court appoints Murray	Cutler - c	se set
down for trial on 4-10-74 at 10:00 am.		
'4 Govts Notice of Readiness for Trial filed.		
74 Before COSTANTINO J - case called - Deft RODRIGUEZ &		
present - Interpreter Maria Carden's present and sworm		
suppress tapes begun - Deft having been advised of hi		
the court and on his own behalf withdraws plea of not		
a plea of guilty to counts 1 and 9. sentence adjd with		
in custody - motion of AUSA Levin-Epstein count 7 is d	ismissed.	Deft
advised of his rights under the Y.C.A.	_	
.74 Voucher for compensation of expert services filed. (
74 Letter filed dated May 22, 1974 from George Sheinberg		
substituting atty for Jorge Rodriguez in place and st Murray Cutler, Esq.	ead of	
Notice of Appearance filed (Rodriguez)		
7		
Before COSTANTINO J - case called & marked off (For case to deft Alfonso Pineros.)	ompetency	nearing_
Before COSTANTINO, J Case called - Deft present witho	ut counsel	- Sentence
adjd to 6-14-74 at 10:00 A.M. (RODRIQUEZ)		
.7% By COSTANTINO J - Order appointing counsel filed (Pi	neros)	
Before COSTANTINO J - case called - deft Jorge Rodrig		sel
George Sheinberg present with interpreter Manuel Ras	The state of the s	
deft sentenced to imprisonment for 7 years on count	one and 7	years
on count 9 and 7 years special parole term to run com		
each count pursuant to 18:4208(a)(2). On motion of A	sst Levin-	Epstein
counts 2, 6, 8 and 10 are dismissed.		
Judgment & Commitment filed - certified copies to Mars		
4 Certified copy of Judgment & Commitment returned and		ft
RODRIGUEZ delivered to Federal Detention Headquarter	s.	

S DATE	PROCEEDINGS
7-2-74	Before COSTANTINO, J Case called - Deft and counsel Barry Krinsky pre-
	sent-Interpreter Ricardo Mira present- Deft committed to Springfield
	Mo. for a period of 90 days- Govt to prepare order (PINEROS)
7-2-74	Voucher for compensation of counsel filed (PINEROS)
7-8-74	By COSTANTINO J - Order filed that the deft ALFONSO PINEROS be
	examined by at lease one qualified psychiatrist under the provisions of T-18, U.S.C.Sec. 4244 to determine if he is mentally competent and
	further Ordered that the deft shall be taken by the U.S.Marshal
Virginia.	for the Eastern District of NY to the U.S. Medical Center at
	Springfield, Mo. and that a report be rendered to the Hon. Mark
	Costantino (examination not to exceed 90 days) and copies of said
	report be sent to Barry Krinsky, counsel for the deft., united States attorney David Trager and upon completion of said examina- tion the deft shall be returned to his present place of incarcera- tion, Federal Det. Headquarters, N.Y.C. (Order filed and
	received July 8, 1974 but dated July 3, 1974)
7-11-74	
(i)	deft Jurge Rodriguez delivered to Federal Reformatoryy
1-44 ·	Fetersburg, Va.
8-28-74	Petition for Writ of Habeas Corpus Ad-Tastificendum-filed-
	By Costantino L - Writ Issued - of Cos 7/4
1/23/74	Letter from deft JORGE RODRIGUEZ for reduction of sentence filed
11-4-24	By COSTANTINO J - Memorandum and Order filed denying
1	application for reduction of sentece (JORGE RODRIQUEZ)
12-12-74	Before Costantino J - case called - deft Pineros & counsel Barry
\$.A.	Krinsky present - case set down for competency hearing on 1-24-75.
1/24/75	
7	(PINEROS)
- 2/6/75	Before COSTANTINO J Case called - Oral motion for psychiatric examinati
#	motion gunted(PINEROS)
-2/6/75	By/608TANTINO, J Order filed that deft PINEROS be examined pursuant to
• 4	T-18, U.S.C. Sec. 4244, to determine if he is presently insane, etc.
2/7/75	Magistrate's file 74 M 100 inserted into CR file.
• 2/28/75	Before COSTANTINO, J Case called - Adjd to 3/14/75 at 10:00 A.M.
3/14/75	Before COSTANTINO, J Case called- Deft, atty and counsel presmt- Court
	finds deft competent to stand trial- case adjd to 3/21/75 at 10:00 A.M.
	for all purposes(PINEROS)
	•
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* NOATE	PHOCELDINGS
3-21-	5 Before COSTANTINO J - case called - deft Pineros & counsel Barry
	Krinsky present - case adid to 4-8-75 for all purposes.
8-75	Before COSTANTINO J - case called & adjd to 4-29-75 for all purposes
	(ALFONSO PINEROS)
-21-75	Voucher for compensation of expert services filed (deft Pineros,
- Ar Many Land	psychiatric exam -)
20/75	
	present Motion to be relieved as counsel- motion granted- case adjd to
·	5/29/75 at 10:00 A.M. for all purposes
/29/75	Dear Counsel Diesent- Internation
	present-case adjd to 6/6/75 at 10:00 A.M. for all purposes
30/7	By COSTANTINO, J Order appointing counsel filed (PINEROS)
30/75	Govt's memorandum of law filed
5-75	Before COSTANTINO J - case called - deft Pineros & atty Iva Leitel
	present - motion to reduce bail - motion granted - bail car at
3.	\$25,000 cash - case set down for trial on July 21, 1975
.0/75	Voucher for compensation of counsel filed (PINE S)
11/75	By COSTANTINO, JOrder filed allowing deft Pineros's psychiatrist to
-	examine him etc.
121/7	Before COSTANTINO, J Case called - Deft and counsel present-Interpreter
	present-case adid to 7/23/75 for status report
21-75	By COSTANTINO J - Order filed that the deft be produced in the offices
	of David Abrahamson, M.D. on July 22, 1975 at 2:15 PM for examination
	and it is further Ordered that a duly authorized representative shall
	transport the deft from the Federal House of Detention , where he is
	now incarcerated and after such examination has been completed by Dr.
-	Abrahamson the deft shall be returned to Federal Detention etc.
	(ALPHONSO FINEROS)
7-23-	75 Order of deft Pineros for study retd and filed - deft/delivered
-	delivered to offices of Dr. Abrahamson and upon completion of same
. 23 7	was remanded to the Federal Detention Headquarters.
1,3-7	5 Refore COSTANTINO J - case called - deft Pineros & atty Ira Leitel
3	presenter with I terpreter Mr. Boyne - motion to suppress tapes - motion
28/75	denied - case set down for Trial on July 29, 1975 @ 10:00 am.
20//3	John State Dell Sid Godiner Present American
19-75	present - Jurors selected and sworn- Trial contd to 7/29/75(PINEROS)
-7-73	Defore COSTANTINO J - case called - deft Pineros & counsel Tra Leital present - trial resumed - motion to dismiss - motion denied - Govt rests.
	Atended - motion to dishiss - motion denier - Gove reses.

DATE	PROCEEDINGS
-	Trial contd to 7-30-75 at 9:30 am.
7-30-75	Before COSTANTINO J - case called - deft Pineros & atty Iza
	Leitel present-Interpreter present - trial resumed - Both sides
	rest - motion for judgment of acquittal - motion denied - ordersof
	sustenance signed for supper , transportation, lodging, breakfast
	and for coffee) triel contd to July 31, 1975 at 10:00 am.
7-30-7	5 By COSTANTINO J -5 Orders of sustenance filed.
9-11-75	Refore COSTANTINO J - case called - deft Pineros , atty Ira
3.	Leitel and interpreter Albert Boyne present - trial resumed - Jury returns at 4:55 PM and renders a verdict of guilty on
	all 9 counts - jury polled - trial concluded - jury discharged - sentence adjd without date.
7-31-75	Ty COSTANTINO J - Order of sustenance filed
8-4-75	Stenographers transcript filed dated July 31, 1975
8-4-75	Voucher for compensation forwarded to J.Costantino for
	signature (deft Pineros)
8-7-75	Voucher for expert services filed (Pineros)
9-3-7	Three (3) stenographers transcripts filed (pgs 1 to 531)
9-3-75	Voucher for Expert Services filed (Dr. Mario Rendon)
9/26/75	Before COSTANTINO, J Case called- Deft A. Pineros and counsel and
	interpreter Albert Boyne present- Deft sentenced for a period of 7
	years on each count to run concurrent and a special parole term of 10
	years purs. to 18-4208(a)(2) and to be deported upon completion of se
117	terce
	5 Judgment andCommitment retd and filed- certified copiesto Marshal
	- xbarkkkadxaenuxakxdaaakxbanakxaxbanabxbandx -
9-30-7	5 Certified copy of Judgment & Commitment retd and filed -
	deft Pinercs delivered to Warden, MCC, NY.
10/3/75	Notice of appeal without fee filed (PINEROS)
10/3/75	Docket entries and duplicar of notice of appeal mailed to court of appeals
10/14/75	Noucher for compensation of counsel filed (PINEROS)
10/16/75	
	on or before 10/20/75
10/20/7	Record on appeal certified and mailed to court of appeals
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TPP:EL-E:gp F. 741036 S DISTRICT COURT ED NY

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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-TIME A-1 - X

INDICTMENT

-against-

ALFONSO PINEROS, a/k/a "Gilberto" and JORGE RODRIGUEZ, a/k/a "Georgie", a/k/a "Jorge Zuniga",

T. 21 U.S.C. §841(a)(1) and T. 18 U.S.C. §924(a), §924(c)(2) and §2

Defendants.

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 21st day of November 1973 and the 10th day of January 1974, both dates being approximate and inclusive, within the Eastern District of New York, and elsewhere, the defendant ALFONSO PINEROS, a/k/a "Gilberto", and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga", knowingly and intentionally did combine, conspire, confederate and agree together and with each other to distribute and to possess with intent to distribute, cocaine

hydrochloride, a Schedule II narcotic drug controlled substance in violation of Title 21, United States Code, §841(a)(1).

In furtherance of said unlawful conspiracy and to further the objectives thereof, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga", within the Eastern District of New York, committed the following:

OVERT ACTS

- 1. On or about December 11, 1973, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" delivered approximately 125.8 grams of cocaine to an undercover agent of the Drug Enforcement Administration in Queens, New York.
- 2. On or about January 9, 1974, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" delivered approximately 24 grams of cocaine, to an undercover agent of the Drug Enforcement Administration in Queens, New York.

3. On or about January 10, 1974, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" delivered approximately 1,067 grams of cocaine, to an undercover agent of the Drug Enforcement Administration in Queens, New York.

COUNT TWO

On or about the 11th day of December 1973, within the Eastern District of New York, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" did knowingly and intentionally possess with intent to distribute approximately 125.8 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, \$841(a)(1) and Title 18, United States Code, \$2).

COUNT THREE

On or about the 11th day of December 1973, within

On or about the 11th day of December 1973, within the Eastern District of New York, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" did knowingly and intentionally distribute approximately 125.8 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, \$841(a)(1) and Title 18, United States Code, \$2).

COUNT FOUR

On or about the 9th day of January 1974, within the Eastern District of New York, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" did knowingly and intentionally possess with intent to distribute approximately 24 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, \$841(a)(1) and Title 18, United Staes Code, \$2).

COUNT FITE

On or about the 9th day of January 1974, within the Eastern District of New York, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" did knowingly and intentionally distribute approximately 24 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1) and Title 18, United States Code, §2).

COUNT SIX

On or about the 10th day of January 1974, within the Eastern District of New York, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" did knowingly and intentionally possess with intent to distribute approximately 24 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1) and Title 18, United States Code, §2).

CCUNT SEVEN

On or about the 10th day of January 1974, within the Eastern District of New York, the defendant ALFONSO PINEROS/
a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a
"Georgie" a/k/a "Jorge Zuniga" did knowingly and intentionally possess with intent to distribute approximately 24 grams of cocaine hydrochloride, a Schedule & narcotic drug controlled substance. (Title 21, United States Code, \$841(a)(1) and Title 18, United States Code, \$2).

COUNT EIGHT

On or about the 10th day of January 1974, within the Eastern District of New York the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" did knowingly and intentionally possess with intent to distribute approximately 1,010 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, \$841(a)(1) and Title 18, United States Code, \$2).

COUNT NINE

On or about the 10th day of January 1974, within the Eastern District of New York, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" did knowingly and intentionally distribute approximately 1,010 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, \$841(a)(1) and Title 18, United States Code, \$2).

COUNT TEN

On or about the 10th day of January 1974, within the Eastern District of New York, the defendant ALFONSO PINEROS, a/k/a "Gilberto" and the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" did knowingly and intentionally possess with intent to distribute approximately 299 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1) and Title .

COUNT ELEVEN

On or about the 10th day of January 1974, within the Eastern District of New York, the defendant JORGE RODRIGUEZ, a/k/a "Georgie" a/k/a "Jorge Zuniga" did knowingly, wilfully and unlawfully, carry a firearm, to/wit: a Smith & Wesson, .22 caliber revolver, serial #M18739, during the commission of felonies to wit: knowingly and/wilfully distributing and possessing with intent to distribute cocaine hydrochloride, a Schedule II narcotic drug controlled substance in violation of Title 21, United States Code, \$841(a)(1) and Title 18, United States Code, \$2, which felonies are prosecutable in a Court of the United States. (Title 18, United States Code, \$924(a)(2) and \$924(a)).

A TRUE BILL.

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FOREMAN.

Edina Porton Property

Charge of the Court

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THE COURT: All right.

Mr. Foreman, ladies and gentlemen of the jury:
We now come to the final stage of the proceedings. The Court will now charge you on the law

to be applied to the facts in the case.

As you may recall, I initially gave you a precharge as to the manner in which the case would be
presented to you. I told you that most of the evidence in the case would come in the form of the
testimony of witnesses, and that you were to pay
special attention to the manner in which the witnesses
testified.

I believe I also instructed you that you would be the judges of the facts in the case, that being your sole province; and that your recollection of the facts after having heard all of the evidence in the case — the testimony of witnesses and the documentary proof — was to control the determination of the issues.

Likewise, at that time I told you that I would he the judge of the law. This has not changed at this stage of the proceedings. I will not review the facts in this case for you because I am certain that with summations by the attorneys there is no

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need for the Court ro review the facts. In any event, if you find that there is some fact in the case that you may have forgotten or do not recollect, or you cannot agree with each other in your deliberations, you can have it read back from the record, and that will, I am sure refresh your memory.

In any event, I am the judge of the law. You must accept what I say to be the law in this case.

Now, the attorneys have been permitted by the Court and by the rules to make opening statements and summations to you. Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence.

However, the Court and the law does permit you to take the arguments that they have proffered before you and weigh those arguments. And if you agree with what they have said on either side of the case you may use those arguments in your deliberations and in discussing the case with each other, and try to convince one another as to what the final determination shall be with reference to the deliberations at hand.

If you feel that the arguments are not commensurate with the testimony and the proof in the case, you may disregard them. The arguments are not

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evidence. You need not weigh them. However, there are times when the arguments of the attorneys will give you an insight as to something you may have missed, and you may discuss that portion of it if you so desire.

Now, of course, I also said to you that during the trial the Court will be the judge of the law.

Likewise, as to motions which at times we had at a side bar, as you may recall. That was not for the purpose of keeping any of the proof free you, but were matters of law that were discussed between the attorneys and the Court itself and should not have come before you.

In any event, if you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should remove that from your mind because I tell you here and now I have come to no conclusion in this case nor have I indicated to you in any way whatsoever what my feeling is with reference to the facts in the case or with reference to the guilt or innocence of the defendant.

That is your province and your job. You should not try to weigh what you believe the Court's impression may be.

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You must understand that the lawyers who appear before you are advocates. They are advocating the best case they can for the parties they represent and they have a right to exercise as much forcefulness as they desire in their questioning or otherwise in presenting their case. I say this because this is within the framework of the ordinary trial.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the "Not-Guilty" plea of the accused. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice or bias.

Both the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

During my precharge I told you, among other things, that the questions asked by the attorneys are never to be considered as evidence even though the question may contain a statement of evidence. You are reminded that only the answer to the question is

Charge

cvidence, if, of course, the question was answered.

Of course, you know by this time that this case has come before you by way of an indictment presented by a Grand Jury sitting in this Eastern District. That indictment charges the defendants with nine counts I shall now read to you.

Remember, the indictment is merely an accusation, merely a piece of paper. It is not evidence and is not proof of anything.

Count One:

"On or about and between the 21st day of
November 1973 and the 10th day of January 1974, both
dates being approximate and inclusive, within the
Eastern District of New York, and elsewhere, the
defendant Alfonso Pineros, a/k/a "Gilberto", and the
defendant Jorge Rodrigues, a/k/a "Georgie" a/k/a
"Jorge Zuniga", knowingly and intentionally did combine, conspire, confederate and agree together and
with each other to distribute and to possess with
intent to distribute, cocaine hydrochloride, a
Schedule II narcotic drug controlled substance in
violation of Title 21, United States Code, Sec. 841
(a) (1).

In furtherance of said unlawful conspiracy and

to further the objectives thereof, the defendant
Alfonso Pineros, a/k/a "Gilberto" and the defendant
Jorge Rodriguez, a/k/a "George" a/k/a "Jorge Zuniga",
within the Eastern District of New York, committed
the following overts acts:

- "1. On or about December 11, 1973, the

 defendant Alfonso Pineros, a/k/a "Gilberto" and the

 defendant Jorge Rodriguez, a/k/a "Georgie" a/k/a

 "Jorge Euniga" delivered approximately 125.8 grams

 of cocaine to an undercover agent of the Drug Enforcement Administration in Queens, New York.
- "2. On or about January 9, 1974, the defendant Alfonso Pineros, a/k/a "Gilberto" and the defendant Jorge Rodriguez, a/k/a "Georgie" a/k/a "Jorge Zuniga" delivered approximately 24 grams of cocaine, to an undercover agent of the Drug Enforcement Administration in Queens, New York.
- "3. On or about January 10, 1974, the defendant Alfonso Pineros, a/k/a "Gilberto" and the defendant Jorge Rodriguez, a/k/a "Georgie" a/k/a "Jorge Zuniga" delivered approximately 1,067 grams of cocaine, to an undercover agent of the Drug Enforcement Administration in Queens, New York, under Title 21, Sect. 846.

COUNT TWO

"On or about the 11th day of December 1973, within the Eastern District of New York, the defendant Alfonso Pineros, a/k/a "Gilberto" and the defendant Jorge Rodriguez, a/k/a "Georgie" a/k/a "Jorge Zuniga" did knowingly and intentionally possess with intent to distribute approximately 125.8 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. Title 21, United States Code, 841(a)(1).

COURT THREE

"On or about the 11th day of December, 1973, within the Bastern District of New York, the defendant Alfonso Pineroc, a/k/a "Bilgerto" and the defendant Jorge Rodriguez, a/k/a "Georgie" a/k/a "Jorge Euniga" did knowingly and intentionally possess with intent to distribute approximately 24 grams of cocaine hydrochloride, a Schedule II narcotic druge controlled substance. Title 21, United States Code, Sect. 841 (a) (1) and Title 18, United States Code, Sect. 2.

Now, there are nine counts of this indictment and I have read three of them to you. The first count was a conspiracy count and the other two counts, one is the intent -- the intentional possession of the cocaine with the intent to distribute and Count 3 was the intentional distribution of the cocaine

Now, Count 4 alleges the same except that on January 9, 1974, it is alleged that 24 grams of cocainehydrochloride was intentionally possessed with the intent to distribute, under Section 841(a) of the United States Code, Title 18, United States Code, Cect. 2.

And Count 5 alleges the same 24 grams were intentionally distributed.

In Count 6 alleges that on the 10th day of

January, 1974, that there was an intentional possession

with the intent to distribute approximately 24 grams

of cocaine hydrochloride, a Schedule II narcotic drug

controlled substance.

In Count 7 alleges that on the 10th day of January, 1974 that there was an intentional possession with the intent to distribute approximately 1,010 grams of cocaine hydrochloride.

And Count 8, alleges that on January 10th, 1974 the same 1,010 grams of cocaine hydrochloride under Schedule II, a narcotic drug controlled substance was intentionally distributed.

In Count 9, alleges that on the 10th day of January, 1974, that the defendant Alfonso Pineros and Jorge Rodriguez a/k/a "Georgie" and "Jorge Zuniga" did

knowingly and intentionally possess with intent to distribute approximately 299 grams of cocaine hydochloride, a Schedule II narcotic drug controlled substance, under Title 21, United States Code, Sec. 841(a)(1) and Title 13, United States Code, Sec. 2.

You will receive a copy of the indictment setting forth these counts and each one will specify as I have specified to you what is alleged in those counts that charge this defendant.

Now, Count One charges a violation of Title 12, United States Code, Sec. 84% and the pertinent part of 21, United States Code, Sec. 846 reads as follows:

"Any person who conspires to violate any Federal narcotics statute is guilty of a crime." That is known as the conspiracy statute and he is charged with a conspiracy.

A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means. So a conspiracy is a kind of "partnership in criminal purposes", in which each member becomes the agent of every other member. The gist of the offense, is a combination or agreement to disobey, or to disregard, the law.

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Mere similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivence, expressly or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indict-ment were agreed upon to carry out the alleged conspiracy; nor that all means or methods, which were agreed upon, were actually used or put into operation.

What the evidence in the case must establish

beyond a reasonable doubt is that the alleged conspiracy was knowingly formed by two or more persons,
including the accused, and that some overt act in
furtherance of the conspiracy was performed.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy.

On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

before the jury may find that a defendant, or any other person, has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and the that the defendant, or other person who is claimed have been a member, wilfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

or participate voluntarily and intentionally, and with specific intent to do something the law forbids. That is to say, to act or participate with the bad purpose either to disobey or to disregard the law.

So, if a defendant, or any other person, with

understanding of the unlawful character of a plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant - a conspirator.

One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed,
the jury should consider the actions and declarations
of all of the alleged participants. However, in
determining whether a particular defendant was a member
of the conspiracy, the jury should consider only his
acts and statements.

He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed beyond a reasonable doubt, and that he was one of its members.

Three essential elements are required to be proved in order to establish the offense of conspiracy charged in the indictment:

First, that the conspiracy described in the indictment was willfully formed, and was existing at or about the time alleged;

Second, that the accused willfully became a

member of the conspiracy; and,

Third, that an overt act was knowingly done in furtherance of some object or purpose of the conspiracy.

doubt from the evidence in the case that existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy an overt act was knowingly done by one of the conspiracy of the conspiracy in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete; and it is complete as to every person found by the jury to have been willfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

Counts 2, 3, 4, 5, 6, 7, 8 and 9 charge violation of Title 21, United States Code, Sec. 841(a)(1).

The pertinent part of Title 21, United States

Code, Sec. 841(a)(1) is as follows:

"...it shall be unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute, a controlled substance.

(continued next page.)

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Counts Two, Four, Six, Seven and Nine charge that the defendant did knowingly and intentionally possess with intent to distribute cocaine hydrochloride in the quantities and on or about the days mentioned in each Count, in violation of Title 21, United States Code, Section 841(a)(1).

Each essential element of the offense must be proven beyond a reasonable doubt. The essential elements of Counts Two, Four, Six, Seven and Nine are as follows:

That the defendant Alfonso Pineros possessed cocaine hydrochloride, a Schedule II Narcotic Drug Controlled Substance;

Second, that the defendant Alfonso Pineros did so possess with a specific intent to distribute cocaine hydrochloride, a Schedule II Narcotic Drug Controlled Substance, and

Third, that the defendant Alfonso Pineros did so knowingly and intentionally.

That is the possession section that we are talking about.

An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason. The purpose of adding

the word "knowingly" was to insure that no one would be convicted for an act done because of mistake or accident, or other innocent reason.

The term "distribute" means to deliver. The term "deliver" means the actual, constructive or attempted transfer of a Controlled Substance.

Counts Three, Five and Eight charge that the defendant did knowingly and intentionally distribute cocain hydrochloride in the quantities and on or about the day stated in the Count.

The essential elements of Counts Three, Pive and Eight are as follows:

First, that the defendant did distribute cocaine by drochloride, a Schedule II Controlled Substance on or about the date stated in each Count.

Second, that the defendant did so knowingly and intentionally on or about the date stated in each Count.

Counts Two, Three, Pour, Five, Six, Seven, Eight and Nine also charge the defendant with aiding and abetting in violation of Title 18, United States Code, Section 2.

Section 2 of Title 18 of the United States Code reads as follows:

"A. Whoever commits an offense against the United States, or sids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"B. Whoever willfully causes an act to be done which is directly performed by him or another would be an offense against the United States, is punishable as a principal.

"In order to aid and abet another to commit a crime, it is necessary that an accused willfully associates himself in some way with the criminal venture, and willfully participates in it as he would in something he wishes to bring about. That is to say, that he willfully seeks by some act or omission of his to make the criminal venture succeed.

"An act or omission is 'willfully' done if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done. That is to say, with that purpose either to disobey or to disregard the law."

You, of course, may not find a defendant quilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions

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was committed by some person or persons, and that the defendant participated in its commission.

We are talking about Two, Three, Four, Five, Six, Seven, Eight and Nine.

In addition to being charged as a principal, the defendant is being charged with a violation of Title 13, United States Code, Section 2, in that he allegedly aided and abetted one Jorge Rodriguez. Defendant is also charged with Conspiring with Rodriguez in violation of Title 21, United States Code, Section 346. Mr. Rodriguez was indicted along with the defendant Alfonse Pineros. Mr. Rodriguez was severed from this proceeding. This severance does not impute to or relieve Mr. Pineros of possible criminal responsibility.

In the Indictment, it is alleged that a particular amount of quantity of cocaine hydrochloride was
involved. The evidence in the case need not establish
that the amounts or quantity of cocaine hydrochloride
was as alleged in the Indictment, but only that a measurable amount of cocaine hydrochloride was in fact
the subject of the acts charged in the Indictment.

As I stated before, the law never imposes upon a defendant in a criminal case the burden or duty of

calling any witnesses or producing any evidence. The crimes charged in this case are serious crimes which require proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act.

To establish specific intent, the Government must prove that a defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutining the operations of the human mind. But you may infer the defendant's intent from the surrounding circumstances. You may consider any statement made, and act done by the defendant, and all other facts and circumstances in evidence which indicate his state of mind. It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done, or knowingly omitted.

Mere presence at the scene of the crime, and knowledge th at a crime is being committed, are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable

doubt that defendant was a participant and not merely a knowing spectator.

of insanity. You are not to consider this defense unless you first found that the Government has proved beyond a reasonable doubt each essential element of the offense. If you find that the Government has failed to prove beyond a reasonable doubt any one or more of the essential elements of the offense, you must find the defendant not guilty, and you should not consider any possible verdict relating to insanity.

essential element of the offense beyond a reasonable doubt, then you must consider whether to bring in a verdict of not guilty by reason of insanity. The law provides that a jury shall bring in a verdict of not guilty by reason of insanity if, at the time of the criminal conduct, the defendant, as a result of mental disease, either lacked substantial capacity to conform his conduct to the requirements of the law, or lacked substantial capacity to appreciate the wrongfulness of his conduct.

Every man is presumed to be same, that is, to be without mental disease or defect, and to be respons-

Charge of the Court

ible for his acts. But that presumption no longer controls when evidence is introduced that he may have a mental disease or defect.

The term "insanity" does not require a showing that the defendant was disoriented as to time or place.

Mental disease includes any abnormal condition of the mind, regardless of its medical label, with substantial effects, mental or emotional processes, and substantially impairs behavior control.

The term "behavior control" refers to the process and capacity of a person to regulate and control his conduct and his actions.

In considering whether the defendant had a mental disease at the time of the unlawful act with which he is charged, you may consider testimony in this case concerning the development, adaptation and functioning of these mental and emotional processes and behavior control.

The burden is on the Government to prove beyond a reasonable doubt either that the defendant was not suffering from a mental disease or defect, or else that he nevertheless had substantial capacity both to conform his conduct to the requirements of the law, and to appreciate the wrongfulness of his conduct. If the

Government has not established this beyond a reasonable doubt, you shall bring in a verdict of not guilty by reason of insanity.

In considering the issue of insanity, you may consider the evidence that has been submitted as to the defendant's mental condition before and after the offenses charged, as well as the evidence as to the defendant's mental condition on those dates. The evidence as to the defendant's mental condition before and after those dates was admitted solely for the purpose of assisting you to determine the defendant's condition on the dates of the alleged offenses.

You have heard the evidence of psychiatrists who testified as expert witnesses. An expert in a particular field is permitted to give his opinion in evidence. In this connection, you are instructed that you are not bound by medical labels, definitions, or conclusions as to what is or is not a mental disease.

What psychiatrists may or may not consider is a mental disease for clinical purposes, where their concern is treatment, may or may not be the same as mental disease for the purpose of determining criminal responsibility.

Whether defendant had a mental disease must be

determined by you under the explanation of those terms as it has been given to you by the Court.

There was also testimony of lay witnesses, with respect to their observations of the defendant's appearance, behavior, speech and actions. Such persons are permitted to testify as to their own observations and other facts known to them, and may express an opinion based upon those observations and facts known to them.

In weighing the testimony of such lay witnesses you may consider the circumstances of each witness, his opportunity to observe the defendant, and to know the facts to which he has testified, his willingness and capacity to expound freely as to his observations and knowledge, the basis for his opinion and conclusions, and the nearness or remoteness of his observations to the defendant in point of time to the commission of the offense charged.

You may also consider whether the witness observed extraordinary bizarre acts performed by the
defendant, or whether the witness observed the defendant's conduct to be free of such extraordinary or
bizarre acts. In evaluating such testimony, you should'
take into account the extent of the witness' observation

of the defendant, and the nature and length of the time of the witness' contact with the defendant. You should bear in mind that an untrained person may not be readily able to detect mental disease, and that the failure of a lay witness to observe abnormal acts by the defendant may be significant only if the witness had prolonged

and intimate contact with the defendant.

You are not bound by the opinions of either expert or lay witnesses. You should not arbitrarily or capriciously reject the testimony of any witness, but you should consider the testimony of each witness in connection with the other evidence in the case, and give it such weight as you believe it is fairly entitled to receive.

You may also consider that every man is presumed to be same, that is, to be without mental disease, and to be responsible for his acts. You should consider this principle in the light of all the evidence in the case, and give it such weight as you believe it is fairly entitled to receive.

Where a defendant has raised the issue of his insanity, and the jury finds from the evidence in the case beyond a reasonable doubt that the accused was not insane at the time of the alleged offense, it is still

the duty of the jury to consider all the evidence in the case which may aid determination of state of mind, including all evidence offered on the issue as to insanity, in order to determine whether the defendant acted or failed to act with requisite intent as charged.

If the evidence in the case leaves the jury with a reasonable doubt whether the mind of the accused was capable of forming, or did form specific intent to commit the crime charged, the jury should acquit the accused.

As stated before, the law never imposes upon a defendant the burden or duty of calling any witnesses or producing any evidence.

(continued on next page.)

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You may hear me sometimes refer to direct evidence and to circumstantial evidence, at it is well to explain now the difference between these two types of evidence.

Direct evidence is where a witness testified to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his senses.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind. Stated somewhat differently, circumstantial evidence is that evidence which tends to prove a disputed fact by proff of other facts, which has a logical tendency to lead the mind to a conclusion that those facts exist which are sought to be established.

Circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant.

A defendant is presumed to be innocent of the crime. Thus, the defendant, although accused, begins the trial with a clean slate and with no evidence against him, and the law permits nothing but legal

in support of any charge against the accused. So,

the presumption of innocence alone is sufficient to

evidence to be presented before a jory to be considered

acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the Government prove

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt is based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act.

Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs. You, the jury, will remember that the defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. If the jury views the evidence in the case as reasonably permitting either

of two conclusions, one of innocence, the other of cuilt, you, the jury, should, of course, adapt the conclusion of innocence.

I have said that the defendant may be proven guilty either by direct or circumstantial evidence.

I have said that direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eye witness.

Also, circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. You, the jury, may make common sense inferences from the proven facts.

from the facts in evidence be consistent only with quilt and inconsistent with every reasonable hypothese of innocence. The test is one of reasonable doubt, and should be based upon all the evidence, the testimony of the witnesses, the documents offered into evidence, and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved. You are to consider only the evidence in the case. But in your consideration

of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from the facts which you find have
been proved such reasonable inferences as seem justified in light of your own experience.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the Prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof.

You, as jurors, are the sole judges of the credibility of witnesses, and the weight their testimony deserves, and it goes without saying that you should scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthyuof belief. Consider each witness intelligence, motive and state of mind, and his demeanor and manner while on the stand. Consider the witness ability to observe the matters as to which he has testified, and whether he impresses you as having an acute recollection of these matters. Consider also

any relation each witness may bear to either side of the case, the manner in which witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of distant
witnesses, may or may not cause a jury to discredit
such testimony. Two or more persons witnessing an
incident or a transaction may see or hear differently,
and innocent recollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance, or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

When a defendant in a case of this kind takes the stand, which he has a perfect right to do, he is subjected to all the obligations of witnesses, and his testimony is to be treated like the testimony of any other witness, that is to say, it will be for you to

say, remembering the substance of his testimony, the manner in which he gave it, his cross-examination, and everything else in the case, whether or not he told the truth. Then, again, it is for you to remember, you have a perfect right to do so, the very grave interest the defendant has in the case. As he places himself as a witness, he stands like any other witness.

other than the accused, has said or done something, or has failed to say or do something, which is inconsistent with the witness' testimony at the trial, may be considered by the jury for the sole purpose of judging the credibility of the witness, but may never be considered as evidence or proof of the truth of any such statement.

Where a witness is a defendant on trial in the case, and by such statement or other conduct, the defendant admits some fact against his interest, then the statement or other conduct, if knowingly made or done, may be considered as evidence of the truth of the fact so admitted, as well as for the purpose of judging the credibility of the defendant as a witness.

An act or omission is "knowingly" done if done voluntarily and intentionally, and not because of

mistake or accident or other innocent reason.

its truthfulness. If you find any witness lied as to any material fact in the case, then the law gives you certain privileges. One of those privileges is that you have the right to disregard the entire testimony of that witness. If you find, however, that you can sift through that testimony and determine which of the testimony is true, and which is false, then the law allows you to take the portions which were true and weigh it, and disregard those portions which were false. That again is within your prerogative.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence.

You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

You are not obliged to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide because of the wit-

ness' bearing and demeanor, or because of the inherent improbability of his testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

The Government is not required to prove the essential elements of the offense as defined in these instructions by any particular number of witnesses.

The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of an essential element of the offense charged, if you believe beyond a reasonable doubt that the witness is telling the truth.

Testimony was introduced as to the defendant's mental condition at the time of the commission of the crime. A layman may give an opinion on the issue of insanity only on the bases of facts known to him.

An expert, however, may base his opinion on the facts which he has observed, or on the facts which he has heard others relate, or on hypothetical facts, based on the evidence.

Expert testimony on the issue of the defendant's sanity is not binding on the jury, and it may reach a contrary conclusion on the basis of other evidence in the case. You should, however, consider it together

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with all the other evidence in the case in determining the defendant's mental condition at the time of the commission of the crime charged in the indictment.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case, from that in which all reasonable persons treat any question depending upon evidence presented to them You are expected to use your good sense, consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction, in light of your common knowledge of the natural tendencies and inclinations of human beings.

If an accused be proved guilty beyond reasonable doubt, say so. If not so proved guilty, say so.

Keep constantly in mind that it would be a violation of your Sworn duty to base a verdict of guilty upon anything other than the evidence in the case, and remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

In making the factual determination on which your verdict will be based, you may consider only the Exhibits which have been admitted in evidence, and the

testimony of the witnesses as you have heard it in this courtroom.

The punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the Court, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

Now, in this type of case there must be a unanimous verdict. That means all twelve of you must agree, and it goes without saying that it becomes incumbent upon you to listen to one another and to argue out the points among yourselves in order to determine in good conscience whether your fellow jurors' argument is one commensurate with yours, or whether at least you can, with good conscience, agree with him.

You have no right to stubbornly and idly sit

by and say, "I am not talking to anyone. I am not

going to discuss it," because people with common sense

and the ability to reason must communicate, they must

communicate their thoughts. So, anything which appears

in the record, and about which one of you may not agree,

talk it out amongst yourselves, and then, if you cannot

agree as to what is in the record, you may ask the

Court to have that portion of the testimony read back to you.

You may do so by knocking on the door and giving a note in writing to the Clerk, who then present
it to the Court, and I will then bring you into the
courtroom.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

You, Juror No. 1, will be the Foreign, and will preside over the deliberations. You will be the spokesman here in the courtroom. When the jury has arrived at a jury, and that verdict must be unanimous, as to the nine counts in the indictment, for each one of those counts must be decided separately. If you find the defendant guilty as to all counts, of course, the form of your verdict will be:

"We, the Jury, find the defendant Guilty as to all Counts."

If you find the defendant Not Guilty as to all Counts, the form of your verdict will be:

"We, the Jury, find the defendant Not Guilty."

If you should find the defendant Guilty as to

one count and not guilty to another count, you are to specify those as to which you find him Guilty, and those to which you find him Not Guilty.

A special form of verdict will be submitted to you which is known as "Not Guilty by Lack of Criminal Responsibility." That will be another form.

In other words, once you have found the essential elements of the crime have been proved by the Government, then and only then do you go into the question of whether or not this defendant at the time it is alleged that he committed these acts was criminally responsible for his acts, and if you should find that he is not, then the form of your verdict as to any of these particular counts specified should be:

"The Jury finds the defendant Not Guilty by Reason of Lack of Criminal Responsibility."

That is the Court's Charge to you. I am going to have you go out to have dinner now.

(Marshals Sworn.)

MR. LEVIN-EPSTEIN: I do not know if it was the intention of the Court at this time to excuse the Alternates?

THE COURT: You have been with us for several days now, and you have put in a lot of time. You will

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not deliberate at supper, but you will start your deliberations when you get back. Do you wish to go to supper, or do you wish to go home?

The Jury and the Alternates will go to supper, but you will not deliberate during your suppertime.

You will be brought back after, and then you will star your deliberations.

You may follow the Marshals now.

Do not discuss the case at this time.

THE FOREMAN: Could any of the jurors make any phone calls?

and the person you wish to be contacted, and the phone calls will be made for you.

THE FOREMAN: Thank you.

(Jury leaves courtroom.)

IMR. LEVIN-LPSTEIN: Your Honor, I did not wish to interrupt your Charge, but apparently during the course of your Charge -- and I did not notice it when we went through the Charge Book -- but I believe you referred to Title 18, Section 846. Of course, it is Title 21, Section 846.

THE COURT: They will get a copy of the Indict

MR. LEITEL: Excuse me, I missed what was happ

ing.

MR. LEVIN-EPSTEIN: I was merely pointing out for the record that the Court inadvertently referred to Section 846 of Title 18, when we all recognize it is Title 21.

THE COURT: The Indictment will be submitted to the Jury.

At one point I may have done it.

MR. LEVIN-EPSTEIN: I think it was copied improperly in your book.

MR. LEITEL: I don't recall it. I do not see how it would affect the deliberations one way or the other.

MR. LEVIN-EPSTEIN: I merely point it out so the record shall be clean.

THE COURT: All right.

MR. LEVIN-EPSTEIN: What time will the jury be coming back?

THE COURT: About 8:00 o'clock.

MR. LEITEL: We are free for a couple of hours then.

THE COURT: Yes.

(Recess taken.)

(continued on next page.)

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(The following occurred at 9:30 o'clock p.m. in the absence of the jury:)

MR. LEITEL: Is it necessary that the defendant be present?

THE COURT: Absolutely.

MR. LEITEL: I would suggest that the defendant should be present. I don't know who should be called.

THE COURT: That's the marshal's job. How come you two are starting to involve yourselves in the Court's business? You had better sit down.

THE MARSHAL: Your Honor, would you care to have the defendant present?

THE COURT: It's your job. You do it.
THE MARSHAL: Yes, sir.

THE COURT: It's your job. Nobody takes anybody's job over. Nobody takes mine over. Nobody takes the marshal's job over. Nobody takes the drug agent's job over.

MR. LEVIN-EPSTEIN: your Monor, I have here Government's Exhibit 1 which is apparently what they are asking for.

THE COURT: We will find out in a minute.

THE MARSHAL: Bring the defendant up before

Judge Costantino, please.

MR. LEVIN-EPSTEIN: Mr. Leitel and I have discussed it. There appears to be no evidence with respect to the handwriting on the note. And there appears to be no evidence of any official reports of the agents that have been put in evidence.

THE COURT: We will tell them that.

MR. LEVIN-EPSTEIN: Is that correct?

MR. LEITEL: Yes. May I see, sir, for a moment, the note that the jury sent in?

THE CLERK: I want to read it into the record.

THE COURT: You didn't put it down yet because you didn't put No. 2.

THE CLERK: This one I didn't see yet.

(Documents referred to were received and marked Court's Exhibits 1, 2 and 3 respectively.)

MR. LEITEL: I am sorry. Did you want to read any of these into the record?

Harold, do you want to read any of this into the record?

Court Exhibit 3 reads as follows:

"1. Gray's and Kobell's statements (the report)."

Now there are no statements or reports from these two agents that are in evidence.

1	There is another sentence that reads as follows:
2	"Was the palmed note handed to agent in
3	Pineros' handwriting?"
4	There is no evidence with regard to whose
5	handwriting the note is in.
6	In parentheses follows "Agent Kobell in
7	Ruben apartment." I guess they are referring to
8	that is where Kobell got the note, in Ruben's
9	apartment.
10	The last words on that note are "evidence
11	No. 1." I don't know what they are asking for,
12	whether a copy of that or referring to that because
13	evidence 1 is No. 1.
14	THE COURT: If you leave it to me I know what
15	they are talking about.
16	MR. LEVIN-EPSTEIN: Do you want this? There
17	it is.
18	THE COURT: Not yet. I will get to that.
19	Okay, let's get the defendant here.
20	(The defendant thereupon entered the courtroom.
21	THE COURT: Bring in the jury.
22	(The jury thereupon returned to the courtroom
23	at 9:35 o'clock p.m.)
24	THE COURT: All right. We brought you in to
25	straighten out the note for you. We received this

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note marked Court's Exhibit 3:

1. Gray's and Kobell's statement. Well, those statements are not in evidence. And therefore you will recall I told you something that is not in evidence you cannot see. You cannot see them.

Now, was the palmed note handed to agents in Pineros' handwriting? We will give you the note itself and you can look at it. There is no testimony as to whose handwriting was on that note.

And that is Exhibit 1.

I will send in likewise -- are there any other exhibits you want? I will send in all the exhibits you want. Do you wish all the exhibits?

THE FOREMAN: Yes. They want the packet of cocaine.

THE COURT: No, you can't have that. That is the one thing you cannot have.

THE FOREMAN: We are not going to test it.

THE COURT: I don't care what you are going to do with it.

THE FOREMAN: The question came up can you define the law of knowingly and intentionally.

THE COURT: I will tell you again what it is and you listen very carefully. I want to give you the exact definition as I gave it to you.

May I say this to you: There is no question that the substance that is involved in this case is the controlled substance cocaine. So there is no need for you to take a look at it or anything else.

What you saw on the table was the cocaine. All right. No question about it. That is conceded by way of stipulation. The only other item is the question of definition of knowingly which I will give you in a few seconds.

THE FOREMAN: The note that you have over there.

THE COURT: Give it to him now. You may carry
it inside with you.

other exhibits, you know. There are medical reports and there are other exhibits you are entitled to.

The only exhibits you are not entitled to are those exhibits marked for identification only. Now if you wish all the exhibits to be sent in we will send them in to you.

THE FOREMAN: Can I ask a question?
THE COURTS Surely.

THE FOREMAN: Was it brought out in the trial as to the number that you have on here in the defendant's handwriting?

THE COURT: You mean the address?

THE FOREMAN: No. I am talking about the phone number. Is this the defendant's writing? Is this his handwriting?

THE COURT: Well, the most we can do is refer you to the minutes. We are not allowed to explain to you what is in the record. What we can do is find that portion of the record and read that portion of the testimony back to you. No one is allowed to paraphrase the testimony in the record. All right. Do you want that? We will get it for you. We have the transcribed minutes here so we can have that for you.

THE FOREMAN: Your Honor, could we get the medical record?

THE COURT: Yes. They are in evidence. You may look at the medical records if you wish.

THE FOREMAN: Your Honor, have phone calls been made?

THE COURT: Yes, phone calls were all made.

JUROR NO. 2: Government's Exhibit 1?

MR. LEVIN-EPSTEIN: That's Government's

Exhibit 1.

THE FOREMAN: We want to know whether this is the defendant's handwriting, if it was stipulated in

MR. LEVIN-EPSTEIN: Your Honor, the Foreman

has a question.

the trial.

THE FOREMAN: Our question is, is this the defendant's handwriting or was that brought out on the trial?

THE COURT: No, I am trying to find the minutes of where that happened. If you are just patient and do not discuss it you will get it in about two seconds.

MR. LEVIN-EPSTEIN: There is no reference in the transcript as to the handwriting on that document.

MR. LEITEL: There is no testimony.

THE COURT: There is no testimony as to the handwriting. And the only thing in the testimony is how you received it, right? Do you wish that read to you, how they received it?

THE FOREMAN: Yes.

THE COURT: What page is it?

MR. LEVIN-EPSTEIN: I am trying to find it now, Judge.

THE COURT: And I am trying to find it.

MR. LEITEL: Judge, may I with permission pass the exhibits --

THE COURT: No, sit down. It's the marshal's

job. It is not the lawyer's job. That is why we have marshals. You do nothing.

MR. LEVIN-EPSTEIN: Your Honor, page 41.

THE COURT: We will get all the exhibits together and send them in to you at one time. The marshals will bring them in to you. No one else is entitled to do anything. You understand that?

MR. LEITEL: Yes.

THE COURT: I am not trying to be rude but I must conform to what is proper under the circumstances of how to handle a jury.

MR. LEVIN-EPSTEIN: Well, your Honor, page 41 to 44 apparently.

THE COURT: Line 24. Line 22.

"Item marked for identification as Government's Exhibit 1."

And the question was:

"Agent Kobell, I show you what's been marked as Government's Exhibit 1 for identification and I ask you if you can recognize and identify that document?

"Answer: This is the piece of paper that I just referred to.

"Question: How can you tell that that's the piece of paper? How do you identify it?

"Answer: Well, I identify it in two ways.

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I recognize the handwriting on the paper, the paper itself, and I recognize my initials and the date.

"Question: And what initials appear there?

"Answer: The initials K.K. and date November 29, 1973.

"Question: Does there also appear another set of initials there?

"Answer: Yes.

"Question: What initials are they?

"Answer: M.S.G., and the date, 11/29/73.

"Question: Do you know whose initials they

are?

"Answer: Yes, I do.

"Question: Whose initials are they?

"Answer: Michael Scott Gray.

"Question: And is that of course Special

Agent Gray?

"Answer: Yes."

Then it was offered into evidence by

Mr. Epstein and shown to Mr. Leitel and was marked in
evidence.

"Government's Exhibit 1 previously marked for identification marked in evidence.

"Question: Agent Kobell, I now show you what's marked as Government's Exhibit 1 in evidence

	519
10 1	and I ask you does there appear thereon a handwritten
2	name?
3	"Answer: Yes.
4	"Question: What name is that?
5	"Answer: Gilberto.
6	"Question; Was that written out in your
7	presence?
8	"Answer: No, sir, it wasn't.
9	"Question: But this is what was on the paper
10	when it was handed to you?
11	"Answer: Yes, it was.
12	"Question: Does there also appear where I'm
13	pointing a number?
14	"Answer: Yes.
15	"Question: What number is that?
16	"MR. LEVIN-EPSTEIN: Let the record indicate
17	that there is the handwritten name Gioberto on the
18	small piece of what appears to be part of an
19	envelope, and the time 3:00 p.m., 4:00 p.m., and then
20	above that the number 4299337 appears.
21	"THE COURT: Okay."
22	That is all there is to that. That is all.
23	Do you see more?
24	MR. LEVIN-EPSTEIN: No, your Honor, my under-
25	standing was that the question was is there any

THE COURT: No, there is none. We just read that about the piece of paper. There is nothing else. That is all there is to it.

THE FOREMAN: All right. Now the jury would like to know whether they are going home.

THE COURT: We'll let you know that in a short time.

THE FOREMAN: Thank you, sir.

THE COURT: You may go inside. In the meantime we will send the exhibits in. As soon as you get them we will bring you right out.

(The jury thereupon retired from the courtroom.)

(The jury thereupon returned to the courtroom at 9:55 o'clock p.m.)

THE COURT: All right. An act is done knowingly if wone voluntarily and intentionally and not because of mistake or accident or other innocent reason. That is the definition of knowingly.

Is there anything else you wish now?

THE FOREMAN: Intentionally.

THE COURT: Well, it wouldn't be intentionally-

THE FOREMAN: Now about intentional?

THE COURT: I will give it to you in a minute.

All right. I will give you an additional charge as to intent at this time. To constitute the crime charged in the indictment there must be a joint operation of two essential elements. An act forbidden by law and an intent to do the act. Before a defendant can be found guilty of a crime the prosecution must establish beyond a reasonable doubt that under the statute described in these instructions the defendant was forbidden to do the act charged in the indictment and that he intentionally committed the act.

Does that cover it now?

THE FOREMAN: Yes.

THE COURT: Okay.

(The jury thereupon retired from the courtroom at 10:00 o'clock p.m.)

(The following occurred in the absence of the jury;)

THE COURT: We will hold them until about 11:15 or 11:30. If they don't come to an agreement we will put them up in a hotel.

(Recess.)

(continued next page)

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(The following occurred at 11:00 p.m.)

THE COURT: All right, bring in the jury.

MR. L.ITEL: Again, the defendant is not

THE COURT: Wait a moment.

present.

THE CLERK: Jury note marked Court Exhibit 4.

(Document referred to received and marked Court's Exhibit 4.)

(The defendant thereupon entered the courtroom.)

MR. LEVIN-EPSTEIN: Your Honor --

THE COURT: What page?

MR. LEVIN-EPSTEIN: I was just going to say to the Court apparently if it is your understanding of the note that they want all the testimony relating to the delivery of the 24 grams?

mean by it. I don't understand anything until I ask the jury. Wherever there is 24 grams mentioned that is what I am going to read.

MR. LEVIN-EPSTEIN: There is no mention of 24 grams per se. Of course, that is approximate weight. What they are speaking of, your Honor, is the sample of cocaine that was delivered on January 9th.

THE COURT: Yes, I know.

MR. LEVIN-EPSTEIN: Your Honor, the testimony

of Agent Kobell relating to January 9th begins 523
page --

THE COURT: Kobell?

MR. LEVIN-EPSTEIN: Yes. The testimony of Agent Kobell of January 9th begins at page 87 and it continues through page, at least as far as it relates to the sample, and I am sure that is what you want --

THE COURT: Yes.

MR. LEVIN-EPSTEIN: That continues through the page where I offer it in evidence on page 92.

Now as to Agent Gray, your Honor, the testimony with respect to January 9th begins on -if the Court will bear with me for a moment -- yes,
the testimony with Agent Gray with respect to
January 9th begins on page 204. I believe that is in
the second volume. And with respect to the exchange
of the sample, your Honor, it is completed at page 211.

MR. LEITEL: Your Honor, we are going to be reading the direct testimony?

THE COURT: Not tonight.

MR. LEITEL: Yes, sir. Then are we going to consider as well with regard to the 24 gram sampler of January 9th elicited on cross-examination as well?

THE COURT: Whatever they want I will ask them

They make up their minds. I don't make up their minds. 1 MR. LEITEL: May I indicate the cross-9 examination on this issue for Agent Kobell, it begins on page 121 and I guess it just ends at 122. I haven't found Gray yet but I will find it by tomorrow morning since we are not going to read it 6 until tomorrow morning. THE COURT: What page did you say, January 9th, 8 page 204 to what? MR. LEVIN-EPSTEIN: It begins on page 204 and 10 it continues tr page 207, Judge, at which point you 11 took a recess, you notice, line 14. 12 MR. LEITEL: The cross-examination of Gray 13 with regard to the sampler on the 9th begins on 14 page 251. I guess it ends on page 252. 15 MR. LEVIN-EPSTEIN: At line 13. Right? 16 MR. LEITEL: Yes. That's fine. Page 251 to 17 252. 18 MR. LUVIN-EPSTEIN: I guess we are ready. 19 THE COURT: All right, bring the jury in. 20 MR. LEVIN-EPSTEIN: Your Honor, if you don't 21 mind, it's only a matter of about ten or twelve pages. 99 THE COURT: The car is waiting for them 23 downstairs. We will see what happens. 24 MR. LEVIN-EPSTEIN: It's a very brief portion.

(The jury thereupon returned to the courtroom. THE COURT: We will read the minutes to you 2 now? And then after we read the minutes we have the 3 cars waiting to take you to the hotel. So the portion of the transcript read indicating delivery of 24 5 grams of cocaine specified in Count 5 of the 6 indictment on January 9th. It won't be long so we 7 will read it to you now. That would be January 9th. 8 We will read it. Read Kobell's testimony, page 87 9 to 92 first and then the cross-examination at 121. 10 (Testimony of Agent Kobell was thereupon read 11 from page 87 line 12 to page 92, line 18.) 12 THE REPORTER: That is page 92. 13 THE COURT: You are up to 92. 14 THE REPORTER: Yes. 15 THE COURT: That's all. 16 MR. LEVIN-EPSTEIN: I don't have my copy, your 17 Honor. 18 THE COURT: Now read 121. 19 MR. LEITEL: Your Honor, will you read 116, 20 sir? 21 THE COURT: Not 121. 22 MR. LEITEL: Line No. 15 in 116. 23 24

1	MR. LEVIN-EPSTEIN: Mr. Leitel, 116?
2	MR. LEITEL: 116.
3	THE COURT: What's happening?
4	THE FOREMAN: That's all we wanted to know.
5	THE COURT: You don't want anything else?
6	THE FOREMAN: No.
7	THE COURT: That's all they want. They are
8	the judges of what they want.
9	MR. LEITEL: Your Honor
10	THE COURT: That is it. No statements.
11	MR. LEVIN-EPSTEIN: May I take this back?
12	THE COURT: Yes, you can take it back. I
13	think we have to make some more phone calls. Do you
14	want us to make the rest of the phone calls now that
15	you won't be home tonight?
16	THE FOREMAN: Yes.
17	THE COURT: Don't deliberate any further at
18	this point. They will take you downstairs to the
19	Carey car. Don't talk to anyone. Keep an open mind
20	At the hotel definitely don't try to associate or tal
21	with anyone, or try to get out of the room or leave
22	the room without a marshal knowing what you are
23	doing and where you are going.
24	THE MARSHAL: If your Honor please, they are
25	locked in their rooms. No communication with the

outside.

THE COURT: No way. Do you understand that now? We will have you back here in the morning and you will start deliberating the first thing in the morning.

THE MARSHAL: The gentleman has a question,

THE COURT: Yes.

JUROR NO. 11: I have my car parked on 84th St. and 14th and 15th Avenue. That is Dyker Heights.

And at 11:00 o'clock the alternate side stops.

THE COURT: At 11:00 the alternate side stops?

JUROR NO. 11: It should be moved.

THE MARSHAL: Does any member of your family have the key?

JUROR NO. 11: I have the key but no member of my family drives.

THE MARSHAL: If he gets a ticket, your Honor, that is it. I trust we can get him excused.

THE COURT: I can't get myself excused. I park in a judge's spot and they give me a ticket.

JUROR NO. 1: What time are we due back in court tomorrow morning?

THE COURT: They bring you back. You are fully within control. Don't worry about it.

1	MR. LEITEL: May I make a statement at the
2	side bar?
3	THE COURT: No, you can't make a statement.
4	When they leave you can make a statement.
5	You don't govern what the jury wants. If that
6	is all they want, that is all that they want.
7	JUROR NO. 3: Can a call be placed to a wife
8	before we leave here?
9	THE COURT: Yes. Just leave us the telephone
10	numbers. The same telephone numbers, do we have the
11	inside, Harold? Will you write them out once again
12	so we have them and we will have the phone calls mad
13	immediately.
14	Take them out. All right.
15	(The jury thereupon retired from the court-
16	room.)
17	MR. LEITHL: I am sorry, sir, but I just
18	wanted to state
19	MR LEVIN-EPSTEIN: Can we wait until the door
20	is closed?
21	MR. LEITEL: I just want to state
22	THE MARSHAL: If your Honor pleases, all
23	exhibits and their paperwork is scattered. Can we
24	secure the room or do we bring it back here? What
25	do you suggest? It is all scrambled on the table.

THE COURT: Bring them out.

MR. LEVIN-EPSTRIN: Perhaps can the room be locked?

THE COURT: No, everybody has a key around here.

MR. LEVIN-EPSTEIN: It was my impression that the jury was ready t go back and deliberate more now. Would it be feasible to ask them if they want to deliberate for a short time further this evening?

THE COURT: No, they weren't ready to go back because I told them they could go to a hotel. They are not ready to go back and deliberate.

MR. LEVIN-EPSTEIN: Perhaps if the Court asked them if they wished to deliberate further --

anything further. They are going to a hotel room.

They have been out long enough. They have been in the court house long enough. That is the end of it.

Tomorrow morning they will come back.

Now what do you want?

MR. LEITEL: I don't want anything. I just
want to make a statement for the record, if your
Honor please. I think in fairness that the jury asked
that the portion of the transcript dealing with the
sale of 24 grams on January 29th, in addition to

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reading them the direct testimony relating to that sale, if we do it for one agent we at least should read the cross-examination.

THE COURT: The jury is the judge of what they wish read back to them. When they send in a note the Court cannot impose any additional information on them other than what they request. That is why we leave it to their judgment. They said they wanted no more. The Foreman indicated to the balance of the jury he wanted nothing else read. That is it.

Good night. Take an exception.

MR. LEITEL: There is a misunderstanding. I just want to explain my position --

THE COURT: I didn't misunderstand. I have been doing this for years. Stop trying to run my courtroom. For years I have been doing it. It has been nineteen years. I am in my twentieth year now. All right.

Good night.

(An adjournment was thereupon taken to Thursday July 31, 1975 at 10:00 o'clock p.m.)

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Rendon-cross

certain psychiatric reports that had been prepared of this patient?

A Yes.

O In fact you had examined -- Mr. Leitel, may I have the defense exhibits?

> (Mr. Leitel hands documents to Mr. Levin-Epstein.)

O (Continutin) Doctor, you said you had examined for example Defendant's Exhibit I, that is a report from Springfield?

A Yes sir.

O Defendant's Exhibit K, this report from Kings County?

A Yes.

O And Defendant's Exhibit H, this report from Kings County?

A Yes sir.

Q And Defendant's Exhibit J, this report from Springfield, is that correct?

A Yes sir.

MR. LEVIN-EPSTEIN: May I have them, Doctor?

And you also testified, did you not, that you had the opportunity to examine these various transcripts, three transcripts you mentioned?

7	1		Rendon-cross
	2	A	I did.
	3	Q	Doctor, did you listen to the tpaes on those
	4	transcripts?	
	5	A	I did not.
	6	Q	Did pu ask to listen to the tapes of those
	7	transcripts?	
	8	A	I did not.
	9	Ω	Doctor, were you told about certain videotapes
	10	that were per	formed or made of the defendant during the
	11	appropriate t	imes of the indictment?
	12	A	Yes.
	13	Q	Did you see those videotapes?
	14	A	I did not.
	15	Ω	Did you ask to see those videotapes?
	16	A	I did not.
	17	Q	Doctor, you testified in pertinent part on
	18	direct examin	ation to certain pharmaceutical therapy that
	19	you had a bel	ief Mr. Pineros was undergoing or had undergone,
	20	is that corre	ct? Drugs that he had received?
	21	Α	Yes.
	22	0	Where did this information come from, sir?
	23	Λ	Part of it from myself as to the past in
	24	Colombia and	part of it from the Springfield report.
	25	Ω	Doctor

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Rendon-cross

MR. LEVIN-EPTSEIN: I ask that these be marked for identification, please, your Honor.

THE CLERK: Document marked for identification as Government's Exhibit 27.

(Document referred to was received and marked Covernment's Exhibit 27 for identification.)

Q I show you what has been marked as Government's Exhibit 27 for identification and I ask you have you ever seen that before?

A No sir.

Q Is it not a fact, Doctor, that those records that I have shown to you just now are the medical records from the West Street Federal Detention Headquarters on this patient or this defendant?

A Yes, this says Department of Justice.

O And you never saw this, did you?

A No sir.

O Did you ever ask to see this?

A I didn't know it existed.

Q You examined the patient at West Street, though, did you not?

A I did.

Q Did you consult with the medical doctor at West Street?

Rendon-cross

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2	A	I	did	not.	

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Ω Did you ask to see the medical reports or examinations that had been performed on him at West Street?

A No, I did not.

O Did you ask to see the doctor who consulted with him at West Street?

A I did not because --

MR. LEVIN-EPSTEIM: Thank you, Doctor.

THE COURT: Don't answer the question.

MR. LEVIN-EPSTEIN: Your Honor, I ask that this sheaf of documents be marked for identification.

MR. LEITEL: May I see what is being marked for identification?

MR. LEVIN-EPSTEIN: ABsolutely.

THE CLERK: Documents marked for identification as Government's Exhibit 28.

(Documents referred to were received and marked Government's Exhibit 28 for identification.)

MR. LEITEL: Your Honor, may I have a side bar with respect to this?

(The following discussion took place at the side bar between the court and counsel.)

MR. LEITEL: Your Honor, I would like to make objection and I would like to make a motion that the

Rendon-cross

U.S. be precluded from in any way going into or making a reference to these documents because there were motions made with respect to discovery of all medical reports and diagnoses related to the defendant.

I was given everything that the Government told me they had. This was never made available to me. And now for the first time there is being shown these medical reports related to the defendant and I move for the prohibition of the Government in referring to these and that any reference to them be struck from the record.

MR. LEVIN-EPSTEIN: They are medical records made in the regular course of business. They were available upon subpoena or request. I was never requested for them. They were not made in contemplation of this trial ...

THE COURT: You had a right to get these from West Street.

MR. LEITEL: I asked the Government for what they had --

THE COURT: You could have served a subpoena.

MR. LEITEL: I asked the Covernment for all medical records in their possession. It was represented to me that I was given everything related

Rendon-cross

to the defendant. This was not given to me and not represented that it existed.

MR. LEVIN-EPSTEIN: Under Rule 16(b) --

MR. LEITEL: I am surprised, your Honor.

THE COURT: The nature and degree of this man's condition has been known to you as his defense lawyer. You knew he was in West Street --

MR. LEITEL: And for that reason I --

THE COURT: You could have gone to West Street.

MR. LEVIN-EPSTEIN: May I complete the record, your Honor. Under Rule 16(b) the only obligation that the Government has in terms of turning over scientific examinations and reports are those which are prepared in contemplation of trial. I am not offering them in evidence. I am offering them as background material for the doctor --

MR. LEITEL: But the Government is making the jury aware of the fact that there are other medical reports in its possession.

(The following occurred in open Court.)

Q Doctor, I show you a sheaf of papers which has been marked as Government's Exhibit 28 for identification and I ask you have you ever seen those before?

Please look through them at your leisure.

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Rendon-cross

(Witness examines document.)

- A Parts of it I saw. Parts I did not.
- Very well. Would it be fair to say that the parts of this sheaf of papers that you have seen are duplicates of the psychiatric reports that have been admitted into evidence for the defendant?
- They are duplicates of the final psychiatric reports.
 - 0 The final psychiatric reports.

Would it be fair to say, octor, that the remainder of these papers of the underlying psychological examinations and diagnoses?

As I see, there are a number of medical reports and everyday reports during the stay of the patient, and examinations that were not included in the final reports, drawings by the psychologist, et cetera, et cetera.

- You say there are drawings by the psychologist?
- Yes. Drawings by the patient that the psychologist asked him to do for tests.
- In other words, there are for example various psychological tests the were performed by the patient at the request of the psychologist?
 - A Yes sir.
 - You have never seen these b efore?

No sir.

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You mentioned in your direct testimony, Doctor, that there was some question in your mind, and I am paraphrasing now and correct me if I am wrong, but that there was some question in your mind as to whether or not certain scars or other disfigurements that were exhibited by Mr. Pineros could have been created or the result of an automobile accident that you saw reported, is that correct?

I said I saw scares that were not described in the reports from the accident.

Did you ever talk to that doctor in Colombia, Doctor?

> A No, I did not.

Did you ever try to call him?

I did not.

Did you ever try to check out his diagnosis of that man?

I did not.

Did you ever try to find out the Colombia medical records of this so-called mental illness that he may have had?

I didn't think that was my function.

Did you think it might have been important in making a determination at this time as to his responsibility

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in November and December of 1973 and January of 1974, Doctor?

A I was called on Friday to examine this patient on Saturday because the trial was starting on Monday so that --

Q Doctor, I am asking you do you think it would have been important to consider these other matters?

A It would have been very important.

Ω And you did not consider them, is that right?

A I didn't think I would have the time.

Q Very well. Now, did you contact any doctors in Springfield that examined him?

A I did not.

O Did you contact Dr. Schwartz at Kings County that examined him?

A No, I did not.

Q The Kings County Hospital, of course, is in Brooklyn, is that correct?

A Yes sir.

O And you say -- you testified rather on your direct examination that you were practicing at the Bellevue Hospital in Manhattan?

A Yes sir.

Q Did you pick up the phone once to call and

ask Dr. Schwartz about his impression?

A I was satisfied with his report.

O Did you read all of the reports by Dr. Schwartz?

A His reports to the Court. I don't know if these are all of his reports.

Q Very well, Doctor. I show you what has been marked as Defendant's Exhibit H and K and I tell you that these are two reports by Dr. Schwartz from the Kings County Hospital. Did you read both of those reports, sir?

A Yes sir.

(Continued next page)

to show that to you because it is not relevant.

It is not important. Apparently so thought Dr.

Rendon.

Did he once ask to see the video tapes that he knew existed? Did he once ask to hear the tapes of these conversations that he knew existed? Did he think that was important?

Ladies and gentlemen, do you think it is important? You heard them. You know how important that is.

The reports from Springfield. The reports from West Street. Dr. Rendon was right there in the jail examining the man. How much effort would it have taken? How important could it have been --

MR. LEITEL: Excuse me, your Honor.

Let me make objection. Dr. Rendon was in possession of all the reports from Springfield.

MR. LEVIN-EPSTEIN: My question to Dr. Rendon:

"I show you Government's exhibit number 28 for identification, and I ask you, have you ever seen this before?"

"I show you what has been marked Government's exhibit 27 for identification, and I ask you, have you ever seen this before?"

Levin-Epstein-summation

Need I go on?

Do you think it was important to find out?

Did he think it was important to find out?

Apparently not.

What is the issue here?

Again, let's focus on what we are talking about. Did you see the man on the tapes during the days in question? Did you hear him? What you saw and what you heard, is it consistent with what Dr. Rendon told you he would base his opinion on or was it consistent with what Dr. Abrahamsen told you was the basis of his opinion?

And did Dr. Abrahamsen see the tapes? Did he hear the tapes? Did he talk to the agents, by the way? Did he ask them? Did he see the medical data? Did he make time to do all these things and travel away from his office to 57th Street to see these things?

Dr. Rendon, on direct examination, couldn't have testified more strongly for the Government, had I called him as a Government witness. I submit to you that had I called him as my witness, he couldn't have been more persuasive as to this man's responsibility at the time of these acts.

dds;pe take 3/3pg

Lavin-Epstein-summation

MR. LEVIN-EPSTEIN: (continuing) But because Dr. Abrahamsen is a learned man, recognized by governors, by the White House, as being an expert, he should not be credited.

On the other hand, Dr. Rendon, who is new to the profession, who is a young man, personable, well spoken, and candid, his opinion should be taken over Dr. Abrahamsen because Dr. Rendon has said I can't form an opinion. That is the man whom you should believe.

Well, ladies and gentlemen, my job could be very easy. I should say, if you believe everything that Dr. Rendon said as being the absolute fact and true, not so much that Dr. Rendon would not be candid, but that that is the actual accurate diagnosis, in that case we can say forget it and walk away because Dr. Rendon never gave an opinion.

I submit to you on his own words out of his own testimony, he said to you, "I don't know. I have a mere suspicion. But I can't commit myself."

Ladies and gentlemen, we all wish and hope that every witness were as candid and as forthright as Dr. Rendon because here is an honest man, not a man who is trying to deceive, not a man who is trying to

Levia-Epstein-summation

do that which cannot be done except to the extent that le has, but with all good intentions, with all good feelings and desires to assist you, but, ladies and gentlemen, do you have the right -- don't you have an absolute right to have the expert testimony of the doctor who has had as much information available to him as possible, who has as much expertise as possible, who has practiced 40 years as compared to four years?

Don't you have a right, ladies and gentlemen, and aren't you entitled to hear testimony from a doctor who is vastly experienced in the area of criminal responsibility as compared to a doctor who has never even been consulted by another doctor as to his testimony?

Den't you have a right to that? Don't discredit Dr. Rendon. Dr. Rendon is doing the best that he can do. But considering what he has to work with, it is not surprising, I submit, that that is the best information he can come up with. I don't know. Honest. Unfortunately, not very helpful.

Whereas Dr. Abrahamsen took all of this available material and makes an opinion, a succinct, albeit qualified opinion.

United States Department of Austice ADDRESS REPLY TO UNITED STATES ATTORNEY AND REFER TO INITIALS AND NUMBER UNITED STATES ATTORNEY RJD:EL-E:1r EASTERN DISTRICT OF NEW YORK F.# 741,036 FEDERAL BUILDING BROOKLYN, N. Y. 11201 February 14, 1975 Barry Krinsky, Esq. 66 Court Street Brooklyn, New York United States v. Alphonso Pineros Criminal Docket Number 74 CR 47 Dear Mr. Krinsky: This is in response to your letter of January 7, 1975 in which you request informal discovery in the above-captioned matter. The responses that follow below are numbered to correspond to your numbered paragraphs. The defendant made no statements following his arrest. 2. At the time of defendant's arrest a search warrant was executed at defendant's residence: Apartment 6-D, 37-55 79th Street, Queens, New York. Seized were a quantity of cocaine, a postal scale, two (2) sheets of blue-lined, white writing paper and \$6,000 in U.S. currency. Enclosed please find photostatic copies of laboratory reports on the drugs seized pursuant to the search warrant and all other quantities of cocaine obtained during the course of the investigation culminating in defendant's arrest. The money seized in the apartment was found during a search consented to, in writing, by Jorge Rodriguez, with whom the defendant shared the apartment. A photostat of the consent form is also enclosed herein. 3. See paragraph 2, supra and enclosures. 4. See paragraph 2, supra and enclosures. See paragraph 2, supra and enclosures. 6. The defendant was the subject of numerous consensual undercover recordings ("Kell") as well as video-tape undercover surveillance. Photostatic copies of transcripts of the recorded conversations (in which

Barry Krinsky, Esq. -2- February 14, 1975

the defendant participated) are enclosed. The video-tapes are available for your inspection, upon three (3) working days notice, at the headquarters of the Drug Enforcement Administration, 555 West 57th Street, New York, New York.

- 7. The Government does not possess, at this time, any material which tends to exculpate the defendant. The continuing duty, under Brady v. Maryland, to disclose such information is acknowledged, however, and should the occasion arise you will be duly informed.
- 8. At this time, the Government does not believe that the defendant has any prior criminal record, however, further inquiry is being made and if there is any further information relative to this matter, you will be informed immediately.
 - 9. Declined at this time.
- 10. Enclosed please find photostatic copies of the search warrant and supporting affidavit referred to in paragraph 2, supra.
 - 11. Declined at this time.
 - 12. Declined at this time.
- This information is contained in the indictment.
 - Declined at this time.
 - 15. Declined at this time.
 - 16. Yes.
 - 17. Declined at this time.

In addition, please find enclosed photostatic copies of all medical reports prepared by various psychiatrists following Court-ordered examinations of the defendant. Pursuant to our numerous conversations on this matter, the Government is hereby requesting informal reciprocal discovery under Federal Rule of Criminal Procedure 16(c). Consequently, please provide this office with copies of any scientific or medical reports within your custody, possession or control, which the defendant intends to offer during the course of the trial. It is also requested that the Government be

provided with copies of all books, papers and documents intended to be offered, and the opportunity to inspect any tangible objects or portions thereof the defendant intends to offer, that are now in his possession, custody or control.

Very truly yours,

DAVID G. TRAGER United States Attorney

Ethan Levin-Epstein Assistant U.S. Attorney

Encls.

Jra Leitel

Glorney at Law

32 Gramercy Park South

Olev York, New York 10003

Office: 622-5775

Home: 673-0096

July 16, 1975

Mr. Ethen Levin-Epstein
Assistant U.S. Attorney
Eastern District of New York
Federal Building
Brooklyn, New York 11201

Re: U.S. v. Alfonso Pineros
74 Cr. 47

Dear Mr. Levin-Epstein:

Pursuant to our understanding and your request under Federal Rule of Criminal Procedure 16(c) for informal reciprocal discovery of scientific or medical reports which the defendant intends to offer during the course of the trial, enclosed please find a photocopy of an original report I received from the Director of the Institute of Forensic Medicine of the Ministry of Justice of the Republic of Colombia respecting the defendant, and a copy of the English translation of this document.

In order to avoid my bringing in a member of the Colombian Consulate to verify the seal and signatory, I would hope that after your inspection of the original thereof we could stipulate to the admissability of this document only, as opposed to its relevancy or significance.

Very truly yours,

IRA LEITEL

IL:av cc. Hon. M.A. Costantino U.S.D.J., E.D.N.Y. DR. JAIRO MUNOZ ESCOBAR NEUROSURGERY-NEUROLOGY

Summary of Clinical History No. 602775

Name:

Date of Entrance: Date of Discharge: GILBERTO AMAYA May 22/71 July 22/71

DEFINITIVE DIAGNOSES:

1. MULTIPLE TRAUMATISMS

2- SEVERE CRANEO-ENCEPHALIC TRAU-MATISM - CEREBRAL CONTUSION -RIGHT TEMPORAL FRACTURE - SUB-ARACHNOIDAL HEMORRHAGE (TRAU-MATIC)

3- LUXO-FRACTURE OF LEFT FOOT -FRACTURE OF RIGHT LEG - LUXO-FRACTURE (MONTEGGIA) OF RIGHT FOREARM - FRACTURE OF NASAL BONES PROPER.

Patient approximately 35 years old, native and resident of Bogota, cabinet maker, admitted to the Emergency Service on May 22/71 with multiple traumatisms, (including crameo-encephalic traumatism), suffered in automobile accident minutes before entrance. Upon examination, it was found: patient in generally bad condition with right frontal wound, erosions on left shoulder and left hemithorax, signs of fracture of the nasal bones proper, copious epistaxis, fracture of right forearm, fracture of superior third of right leg and and luxo fracture of instep of left foot. Traumatic Shock. The Neurological examination showed: patient in moderate coma, agitated, without evident alteration of parietal bones, without signs of lateralization, global exaltation of the tendo-muscular reflexes and bilateral Babinsky. X-Rays of Skull showed Right Temporal Linear Fracture. Other Radiological studies evidenced: Fracture of Nasal Bones Proper, Monteggia Luxo Fracture on right forearm, Fracture of Right Leg, and Left Astragalus-Scaphoidal Luxo Fracture, which received opportune Orthopedic and/or Surgical treatment.

The LCR examination showed: severe subarachnoidal hemorrhage. BILATERAL CEREBRAL ANGIOGRAPHY: discarded lesion occupying space. The investigation for fat in urine and saliva was negative. By means of medical treatment in the Intensive Care area, he recovered consciousness on May 27/71 but continued confused, excited, logorrheic, coprollalic. The FRACTIONAL PNEU-MO-ENCEPHALOGRAM, done on July 6/71 was normal. The EEGS in series were all abnormal, lentified but showed proggresive recovery of the electrical activity of the cerebral cortex towards abnormality. On July 22/71, clearly recovering, he was discharged from the Hospital, with the indication to come to ambulatory controls for External Neurosurgical and Orthopedic consultation, and also for treatment by the Departments of Physical Medicine and Rehabilitation and Psychiatry.

Ophthalmology control showed "visual agnosia". Another Ophthalmology examination in Oct.71, evidenced right homonymous homianopsia with conservation of central vision. RE: 20/20 (Minus) 1 to 20 degrees with correction. LE: 20/20-(Minus). Calcareous lesion?. By this time he had satisfactorily recovered rom the neurologic and osteo-articular lesions. The post-traumatic mental syndrome had also disappeared. The EEG, of Nov. 23/72 was normal. He did not return to controls.

Signature of Physician

JAIRO MUNOZ ESCOBAR

NEUROSURGEON.

m Translated by Emil C. Rodriguez.

Dr. Jairo Muñoz Escobar

Resumen de Historia Clínica No. 602775

Nombre: Fecha de Ingreso: Fecha de Salida: GILBERTO AMAYA Mayo 22/71 Julio 22/71

DIAGNOSTICOS DEFINITIVOS:

1- TRAUMATISMOS MULTIPLES

2- TRAUMATISMO CRANEOENCEFALICO SE-VERO- CONTUSION CEREBRAL-FRAC-TURA TEMPORAL DERECHA-HEMORRA-GIA SUBARACNOIDEA (TRAUMATICA)

3- LUXO-FRACTURA DE PIE IZQUIERDO-FRACTURA DE PIERNA DERECHA- LU-XO FRACTURA (DE MONTEGGIA) DE ANTEBRAZO DERECHO. FRACTURA DE HUESOS PROPIOS DE LA NARIZ.

Paciente de aproximadamente 35 años, natural y procedente de Bogotá, ebanista, admitido en el Servicio de Urgencias el día 22 de Mayo/71 por traumatismos múltiples, (incluyendo traumatismo craneoencefálico), sufridos en accidente automoviliario minutos antes del ingreso. Al examen se encontró: paciente en malas condiciones generales con herida frontal derecha, erosiones en hombro izquierdo y hemitórax izquierdo, signos de fractura de huesos propios de la nariz, epistaxis copiosa, fractura de antebrazo derecho, fractura de tercio superior de la pierna derecha y luxo fractura de cuello de pie izquierdo. Shock traumático. El examen Neurológico mostraba: paciente en coma moderado, agitado, sin alteraciones evidentes de los pares craneanos, sin signos de lateralización, exaltación global de los reflejos tendinomusculares y Babinsky bilateral. Las Radiografías de Cráneo mostraron Fractura Lineal Temporal Derecha. Otros estudios Radiológicos evidenciaron: Fractura de Huesos Propios de la Nariz, Luxo Fractura de Monteggia en antebrazo derecho, Fractura de Pierna Derecha y Luxo Fractura Astragalo-Escafoidea Izquierda, que recibieron tratamiento Ortopédico y/o Quirúrgico oportuno. El examen de LCR mostró: hemorragia subaracnoidea severa. La ANGIOGRAFIA CEREBRAL BILATERAL: descartó lesión ocupando espacio. La investigación de grasa en orina y en saliva fué negativa. Mediante tratamiento médico en el área de Cuidado Intensivo recobró conocimiento el día 27 de M yo/71 pero continuó confuso, excitado, logorreico, coprolalico. El NEUI DENCEFALOGRAMA FRACCIONADO, practicado el día 6 de Julio/71 fué normal. Los EEGS seriados fueron todos anormales, lentificados pero mostraron recuperación progresiva de la actividad eléc-

- II -

trica de la corteza cerebral, hacía la anormalidad. El día 22 de Julio/71, en franca recuperación, se dió salida del Hospital, Con indicación de acudir a controles embulatorios por Consulta Externa de Neurocirugía y Ortopedia y también a tratamiento por el Departamento de Medicina Física y Rehabilitación y por Psiquiatría.

Un control Oftalmológico mostró "agnosia visual". Otro examen Oftalmológico, de Oct.71, evidenció hemianopsia homónima derecha con conservación de visión central. OD: 20/20 (menos) - 1 a 90 grados con corrección. Ol: 20/20-(menos). Lesión calcarina ?. Por esta época se había recuperado satisfactor iamente de las lesiones neurológicas y osteo-articulares. El síndrome mental post-traumático también había desaparecido. El EEG de Nov. 23/72 fué normal. No volvió a controles.

JAIRO MUÑOZ ESCOBAR NEUROCIRUJANO.

REPUBLIC OF COLOMBIA MINISTRY OF JUSTICE INSTITUTE OF FORENSIC MEDICINE

(There is a rubber stamp that reads: REPUBLIC OF COLOMBIA, INSTITUTE OF FORENSIC MEDICINE, BOGOTA)

THE UNDERSIGNED DIRECTOR IN CHARGE OF THE INSTITUTE OF FORENSIC MEDICINE ISSUES THE COPY HEREINAFTER AT THE REQUEST OF THE RELATIVES.

FML. # 14569

Bogota, December 18, 1971

AMAYA CONTRERAS GILBERTO

After having been re-examined, he evidences signs and symptoms of mental ailment and therefore requires psychiatric care for observation, study and treatment. This results from injuries to the skull sustained on September 8, 1971, the disability resulting therefrom lasting ninety (90) days. There is a signature that reads: DOCTOR GUSTAVO SARRIA and another one that reads DOCTOR JOSE J. CALDERON REYES forensic doctors. True and exact copy of the original, issued in Bogota on the 26th day of the month of June, 1975.

(Illegible signature)

ERNESTO SILVA PILONIETA
DIRECTOR IN CHARGE
INSTITUTE OF FORENSIC MEDICINE OF
BOGOTA

(There is a rubber stamp that reads: REPUBLIC OF COLOMBIA, INSTITUTE OF FORENSIC MEDICINE, BOGOTA)

REPUBLICA DE COLOMBIA MINISTERIO DE JUSTICIA INSTITUTO DE MEDICINA LEGAL



EL SUSCRITO DIRECTOR ENCARCADO DEL INSTITUTO DE MEDICINA LEGAL, EXPIDE LA SIGUIENTE COPIA A SOLICITUD DE LOS FAMILIARES.

RML. # 14569

Bogota 18 de diciembre de 1971

AMAYA CONTRERAS GILBERTO

Examinado nuevamente presenta signos y sintomas de enfermedad mental motivo por el cual requiere atencion psiquiatrica para observacion, estudio y tratamiento, esto a consecuencias de las lesiones sufridas en el cranco el dia 8 de septiembre de 1971 cuya incapacidad fue de noventa (90) dias .Hay una firma que dice Doctor GUSTAVO SARRIA y otra que dice DOCTOR JOSE J. CALDERON REYES medicos legistas, es fiel copia tomada de su original, dada en Bogota a los 26 dias del mes de junio de 1975.

ERNESTO SILVA PILONIETA

DIRECTOR ENCARCADO INSTITUTO DE MIDICINA LEGGAL

DE BOGOTA





HALTH AND POSPITALS COMPORATION

KINGS COUNTY HOSPITAL CENTER

451 CLARKSON AVENUE, BROOKLYN, N. Y. 11205

January 25, 1973

Honourable Orrin G. Judd, United States District Judge Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

Re: Alfonso Pineros

Millerde Comayor

Your Honour:

The patient is a man of unknown age who has been indicted before United States District Court, Eastern District of New York on charges of possession with intent to distribute approximately 1.366 kilograms of cocaine on January 10, 1974.

On examination at this time the patient is psychotic and as a result unable to understand the proceedings against him or properly assist in his own defense. On the ward he generally stays by himself, babbling almost continuously in Spanish. On examination, with an interpreter, bizarre, delusional statements pour out of him. His responses to most questions are totally irrelevant. His appearance is quite disheveled and he seems almost totally oblivious to the reality around him.

Patient carries with him a picture of Jesus, which he maintains was his picture when he had his long hair, that he himself was Jesus and was crucified. As if to prove this, he demonstrates scars on his left foot and left chest, and also says that he was whipped. This happened, he says, 465 years ago. When asked how old he is now, he points to the picture of Jesus and says, "The same that he is in there." The patient then goes on to state spontaneously that now he has to go before the firing squad, that he has already died a few times, that one time he was hanged and had his head taken off, that once upon a time he was of another colour, that he is the father of all of us in here. When it is suggested to him that Jesus had no children, he responds that he had lots of them and that Mary Magdelena was his wife. He says he has been in almost every prison there is, that when he leaves here he will go south, north, that he will walk around the world. He says that everybody has to be punished and that everybody has to be forgiven. He relates how at the time of the Flood he saved a lot of people, that next time the world will be destroyed by fire and only five people will be saved. When asked if he speaks to God, he responds, "Sure, don't you see I'm Him?"

When asked if he has been arrested, the patient responds that he has to be incarcerated in almost all jails in the world. When asked if he sold cocaine, he replies that he sells everything there is in the world and that he robs emeralds and gold. All this is said in a rather grandiose, expansive, boastful manner.

Diagnosis; Unspecified psychosis.

Re: Alfonso Pineros

Conclusion: It is our professional opinion that because of his psychosis the defendant is unable to understand the proceedings against him or properly assist in his own defense.

Prognosis: Without any knowledge of this man's past history it is impossible for us to make a meaningful prognosis. If this is an acute reaction to having been arrested on serious charges, the patient may well recover within a reasonable period of time.

Very truly yours,

Daniel W. Schwartz, M.D., F.A.P.A.

Assoc. Professor, Psychiatry, Downstate Medical Center

Deniel W. Shout no.

Director, Forensic Psychiatry Service,

Kings County Hospital

DWS:rg

cc: Allen Rubin, Esq. Edward John Boyd, V. Re: Alfonso Pineros

Conclusion: It is our professional opinion that because of his psychosis the defendant is unable to understand the proceedings against him or properly assist in his own defense.

Prognosis: Without any knowledge of this man's past history it is impossible for us to make a meaningful prognosis. If this is an acute reaction to having been arrested on serious charges, the patient may well recover within a reasonable period of time.

Very truly yours,

Daniel W. Schwartz, M.D., F.A.P.A.

Assoc. Professor, Psychiatry, Downstate Medical Center

Daniel W. Shout no.

Director, Forensic Psychiatry Service,

Kings County Hospital

DWS:rg

cc: Allen Rubin, Esq. Edward John Boyd, V. UNITED STATES DEPARTMENT OF JUSTICE BUREAU OF PRISONS

MEDICAL CENTER FOR FEDERAL PRISONERS
SPRINGFIELD, MISSOURI 65802

April 17, 1974

Honorable Mark A. Costantino, United States District Judge Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

> Re: PINEROS, Alphonso Reg. No. 21611-175 Order 74 CR 47

Dear Judge Costantino:

In accordance with your order of February 11, 1974, psychiatric examination and observation has been completed and the above-named subject is ready to be returned to your district court.

It is the professional staff opinion that the defendant, Alphonso Pineros, is presently mentally ill and not competent to stand trial. He should be returned to court for a competency hearing at which time if the court so pleases it consider our recommendation of incompetency.

He is taking the following medications: Stelazine, 20 mgs., twice a day, and Cogentin, 2 mgs., twice a day.

Enclosed are two copies each of Report of Psychiatric Evaluation dated February 28, 1974, and Report of Psychiatric Staff Examination dated April 2, 1974.

Sincerely,

Jack Eardley, M. D.

Jack Earllegan

Acting Coordinator of Mental Health

FORWARDED:

Pasquale J. Ciccone, M. D.

Director

Enclosures - 4

CC: Bureau of Prisons, Attn: Coordinator for Mental Health Services Edward John Boyd V, U. S. Atty., 225 Cadman Plaza East, Brooklyn, N. Y. Allan Rubin, Esq., 142 Montague St., Brooklyn, N. Y. U. S. Marshal, U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, N. Y. 11201 (w/o enclosures) Classification Form 1b Master Rev. January 1955

UNITED STATES DEPARTMENT OF JUSTICE BUREAU OF PRISONS

CLASSIFICATION STUDY

(Continued)

Register Number

"0" 21611-175

Page-

2/28/74

MASTER

Committed Name PINEROS, Alphonso

REPORT OF PSYCHIATRIC EVALUATION

IDENTIFICATION:

Mr. Pineros claims he does not speak English and the interview was done in the presence of a ward officer who acted as an interpreter. The patient was not too cooperative and failed to answer many of the questions, saying that he did not remember or did not know. He appeared to be very guarded and defensive. Dr. Snow had seen this patient previously and had the same experience when trying to interview him. When asked why he had been sent to this institution he shrugged his shoulders and said he did not know, that he thought sometime after Christmas he was arrested, but he did not seem to be able to understand why he was arrested or else he did not choose to converse about it and was very guarded.

PAST HISTORY:

The patient said he was born in Puerto Rico on a date he did not remember. He seemed to be a very naive person who was very much involved with the Virgin Mary and his two little daughters. He said his father died at an unknown age of unknown

causes and his mother was in her 80's. The patient claims he is the oldest of five siblings, having two sisters and two brothers.

EDUCATION:

The patient claims that he went through the eighth grade and could read and write in Spanish. He denies a military history. He denies he has ever had any sex problems.

He denies trauma, convulsions, blackout spells, and memory loss. The patient also denies that he has ever used drugs or has had a problem with alcohol, had delirium tremens, or ever worked with Alcoholics Anonymous. Patient also denied reality problems but he gave rather astute answers at times, either because he did not understand the question fully or else did not enjoy talking about the questions I asked him. He denied he was depressed or had ever been suicidal.

MENTAL STATUS EXAMINATION:

The patient appeared to be oriented but was unable to do Serial VIIs or interpret

proverbs in an abstract manner. The patient did not appear depressed but seemed somewhat euphoric at times. He related with the interviewer in a rational, factual manner, as far as I could tell, without evidence of pressure of speech, tangential or circumstantial speech, or evidence of loosening of associations. He was unable to give me his three wishes or name people he admired.

When asked to describe himself he said, "I am a man that has come down to earth to live but I seem to be unable to make it here and I seem not to care much what Classification Form 1b Master Rev. January 1955

UNITED STATES DEPARTMENT OF JUSTICE BUREAU OF POISONS

CLASSIFICATION STUDY

(Continued)

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Page-

MASTER

Committed Name PINEROS, Alphonso

Register Number 21611-175

2/28/74

-2-

happens to me because it seems I will soon die."

DIAGNOSTIC IMPRESSION:

Inadequate personality.

Final diagnosis will be made after staffing and testing. It is hoped that the psychologist can administer tests that will clarify problems I have as to this man's competency.

H. B. FAIN, M.D.

Acting Chief, Psychiatric Service

REVIEWED BY:

Jack Eardley, M.D.

Acting Coordinator, Mental Health

Dictated: 2/28/74

HBF: sb

Typed: 3/4/74

UNITED STATES DEPARTMENT OF JUSTICE BUREAU OF PRISONS

MEDICAL CENTER FOR FEDERAL PRISONERS

Springfield, Missouri

SPECIAL PROGRESS REPORT

Reg. No.

"0" 21611-175

4/2/74 Date

PINEROS, Alphonso Committed Name

REPORT OF PSYCHIATRIC STAFF EXAMINATION

Mr. Alphonso Pineros was received here on February 23, 1974, on Court Order of the Honorable Mark A. Costantino, United States District Judge, United States District Court for the Eastern District of New York, under provisions of Title 18, Section 4244, for the determination of competency to stand trial. He is charged with conspiracy to possess and sell cocaine.

He has been undergoing psychiatric evaluation for the past 38 days. He was given his orientation upon his arrival by a trained senior officer specialist. He was seen on the first working day by a staff psychiatrist, a psychiatric nurse and then daily while in lock-up. He was seen within 24 hours by a trained correctional counselor. He was interviewed by a senior classification social worker during his first week.

He was given a physical examination as well as laboratory tests and x-rays.

He was interviewed and evaluated by H. B. Fain, M. D., Psychiatrist.

He was advised, counseled, observed and cared for by psychiatrists, psychologists, correctional officers, counselors and psychiatric nurses.

Finally, he was seen today by the below-listed staff who interviewed him, studied his present chart and previous reports, discussed the case and came to the following conclusion:

/ We find that Alphonso Pineros is presently mentally ill and not competent to stand trial. He should be returned to court for a competency hearing at which time if the court so pleases it consider our recommendation of incompetency.

He is taking the following medications: Stelazine, 20 mgs., twice a day, and Cogentin, 2 mgs., twice a day.

- FOR THE STAFF:

Jadr Eardleyn

Acting Coordinator of Mental Health

Staff members present: Drs. Eardley, Godfroy, Varhely Mr. Horton, Mr. Davidson, Mr. Bouldin Ms. Creson, Ms. Pollard

JE:fea Typed 4/17/74 UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
MEDICAL CENTER FOR FEDERAL PRISONERS
SPRINGFIELD, MISSOURI 65002
November 18, 1974

74103/cm

Honorable Mark A. Constantino United States District Judge Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

> Re: PINEROS, Alfonso Reg. No. 21611-175 CR. No. 74 CR 47

Dear Judge Constantine

In accordance with your order of July 3, 1974, psychiatric examination and observation has been completed and the above-named subject is ready to be returned to your district court.

It is the professional staff opinion that the defendant, Alfonso Pineros, is mentally competent to stand trial. He may be returned to court.

Enclosed are two photostatic copies of those of our hospital chart records which show the nature of our study of this person. The enclosures are: Report of Psychiatric Evaluation dated October 10, 1974, Psychologist's Report on Testing and/or Evaluation dated October 25, 1974, Addendum to Report of Psychiatric Examination dated November 6, 1974, and a final report, Report of Psychiatric Staff Examination dated November 6, 1974.

In addition, enclosed are two copies of the curriculum vitae on Emasue Snow, M.D., Staff Psychiatrist.

- 2 to an increasing workload and a shortage of staff, it is ally requested that you accept the enclosed reports in lieu al court appear mure.

Sincerely,

Associate Director, Mental Health

. _e J. Ciccone, M.D.

mes - 10

... reau of Prisons, Ptth: Mental Health/DAP administrator .S. Marshal, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201 (v. : enclosures) Darry Krinsky, Esq., if Court Street, Brooklyn, New York David G. Trager, United States Attorney, 225 Cadman Plaza East, Brooklyn, New York. 11201.

Classification Form 2-Master Rev. January 1939 UNITED STATES DEPARTMENT OF JUSTICE BUREAU OF PRISONS

M. C. F. P.

SPRINGFIELD, MISSOURI

SPECIAL PROGRESS REPORT "O"

Committed Name PINEROS, Alfonso

Reg. No. 21611.-175

Date 10/10/74

MASIER

REPORT OF PSYCHIATRIC EXAMINATION

IDENTIFICATION:

This is a 37 year old native of Colombia, who was admitted to the Medical Center for

Federal Prisoners on July 15, 1974, pursuent to an order issued by the U.S. District Court, Eastern District of New York, for psychiatric observation and evaluation to determine his mental competency to stand trial under the provisions of Title 18, Section 4244. He is charged with conspiracy to possess and sell cocaine.

PRESENTING PROBLEM:

This patient was examined previously at the Medical Center for Federal Prisoners from

February 23, 1974 until April 25, 1974, at which time the staff concluded that he was mentally incompetent to stand trial. Upon his return to New York City a hearing was held on July 3, 1974, and a new order for psychiatric examination to determine his mental competency was issued. Although we have repeatedly requested information from the U.S. attorney who filed the motion pertaining to this re-examination, we have received no further reason why whother period of observation was considered necessary.

We have not received any available data regarding the circumstances which led to this patient's arrest or any investigation material regarding his background. We were informed on March 1, 197h, in a letter, that there exists an eleven count indictment charging him with conspiracy to possess and distribute cocaine, and that "agents involved in the investigation" reported that throughout extended contact with this patient he appeared to be some. Without any specific details of the charges pending, even of the date or location of his arrest, we must depend solely on the information chosen to be divulged by the patient. He, in turn, insists he does not remember anything about his arrest, and has never been advised about the charges other than he thinks he was charged with possession of cocaine. It is thus impossible to offer any definitive professional judgment regarding the patient's mental condition.

PAST HISTORY:

Mr. Pineros claims he was born in Bogota, Colombia, where he completed only a third

grade education and he worked with his father as a carpenter before he came to New York City sometime in 1972 or 1973, to find work. He claims he was injured in an accident in Colombia, in 1972.

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M. C. F. P.

SPRINGFIELD, MISSOURI

SPECIAL PROGRESS REPORT

"0"

Date 10/10/74

Committed Name PINEROS, Alfonso

Reg. No. 21611-17

-2-

Mr. Pineros was able to remember that he lived in a room in Menhatten and worked at a groccry in Queen's for a naturalized citizen of the United States named Marcos Castro. He travelled to his work by subway daily and helped to clean the store and carry out packages. He was paid \$80.00 for this job. He is married and has four children, two sons, ages fourteen and six, and two daughters, ages twelve and four. His wife came to New York this past year to be near him since she learned he was hospitalized. Her name is Yolanda and he stated that they had lived together for many years before their legal marriage in 1965. He communicates with her regularly by mail or telephone where she is staying in New York City.

MENTAL STATUS:

Mr. Pineros is a short, slender man who speaks only Spanish. He is generally neat in personal

appearance and has maintained himself independently in the open population since his admission here without incident. He socializes with fellow Spanish speaking patients, is alert, friendly and cooperative with the staff and has offered no subjective complaints. He does not require any medication.

At interview Mr. Pineros is oriented and responds to questions with the aid of an interpretor in a relevant, coherent and logical manner. Although he insists that he cannot remember anything about his activities since November, 1973, he shows no evidence of true memory defects except for a definite circumscribed period of time in late 1973 and early 1974. His affect is appropriate to the situation and to the content of thought expressed. His level of intellectual function appears to be within the average range, and his fund of general information is poor but compatible with his educational background.

This patient shows none of the symptoms of bizarre behavior or thought disorder that were described during his observation at King's County Hospital in January, 1974. Although he seems to exaggerate his inability to comprehend the legal processes, he is mentally capable of understanding daily events clearly and is able to conform his behavior appropriately to the regulations of this hospital. He shows no evidence of any present symptoms of thought disorder, perceptual or affective disturbance and there are no residual defects to suggest a prior psychotic episode detected. In my opinion he is presently capable of understanding the charges and assisting counsel in his own defense.

Classification (apr. 2 Master Rev. January 1975 UNITED STATES DEPARTMENT OF JUSTICE, BUREAU OF PRISONS (

M. C. F. P.

SPRINGFIELD, MISSOURI

SPECIAL PROGRESS REPORT

"0"

Committed Name PINEROS, Alfonso

Reg. No. 21611-175

Date 10/10/74

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-3-

DIAGNOSTIC IMPRESSION:

Dyssocial behavior.

Emasue Snow M.D.

EMASUE SNOW, M.D. Staff Psychiatrist

Dictated: 10/10/74

ES:sb

Typed: 10/15/74

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UNITED STATES DEPARTMENT OF JUST BUREAU OF PRISONS

MASTER

M. C. F. P.

SPRINGPIELD, MISSOURT

SPECIAL PROGRESS REPORT

or have PHEROS, Alfonso

Rcg. No. 21611-175

Date 10/25/74

PSYCHOLOGICAL TEST ERPORT

the individual was seen for individual psychological tests. During the testing cooperative, friendly, and related appropriately to the examiner. Due . The parrier the exeminer had to have an interpreter present; however two sted that Mr. Pineros frequently would respond to the exeminer's tions when they were directed to the interpreter. It is my impression r. Fineros understands more English than he tends to convey when being ratio tell.

" A MINISTERED:

Due to the language barrier present the following psychological tests were given: readen Ink Blot Test, Bender-Cestalt-Motor-Visual Test, House-Treement lest, along with a clinical interview.

1310 AND INTELLECTUAL FACTORS: Since we have no objective measure of his intellectual functioning the exeminar's consider is based upon his responses to the Rorschach as well as information . . . I from clinical interview. Based upon this information, it is my that this individual has normal intellectual abilities. The Bender-- The was drawn quite adequately which would rule out any sign of organic tors present. The Bender was also typically the kind found in a person . . . or al intellectual abilities.

TYPE AY PACTORS: On the Rorsehach Test we find there is no indication of thought disturbance present. The the so sign of psychosis nor were there any signs of organic factors . He was somewhat constricted, there is a great deal of enxiety ... the over-all picture would tend to indicate a person who has a that personality structure. The House-Tree-Person projective test is the Borschach findings, again indicating a somewhat constricted

in the has trouble relating to other individuals and who may be · solid sumipulative in nature.

The psychological tests even though they were limited in nature along with the clinical received would tend to indicate an individual with dyssocial behavior. There are no time of organic or psychotic behavior present in this patient.

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Clipped a Whipped CLIPPORD I. WHIPPER, Ph.D. Consulting Psychologist

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UNITED STATES DEPARTMENT OF JUSTIC

MASTER '

MEDICAL CENTER FOR FEDERAL PRISONERS

Springfield, Missouri

SPECIAL PROGRESS REPORT

"0"

Committed Name PINEROS, Alfonso

Reg. No. 21611-175

Date 11/6/74

REPORT OF PSYCHIATRIC STAFF EXAMINATION

On November 6, 1974, the patient was re-examined with the aid of an interpreter in the presence of the following members of the psychiatric team: Dr. Emasue Snow, Staff Psychiatrist; Mrs. Pawnee Creson, R.N., M.S., Unit Manager; Mr. Leon Horton, Case Manager; Mrs. Mabel Pollard, R.N., Psychiatric Nurse; Mr. John Reisenleiter, Staff Psychologist; Dr. Clifford Whipple, Consulting Psychologist; Mr. Edward Dean and Mr. Thomas Bouldin, Correctional Counselors. Following each staff member's report on the patient, the patient was called in and interviewed by the staff. The following summary is the result of the presentations, discussion and conclusions of the psychiatric staff.

IDENTIFICATION: Mr. Pineros is a 37 year old Columbian admitted to the U.S.

Medical Center for Federal Prisons on July 15, 1974, per order
of the U.S. District Court, Eastern District of New York, under the provisions
of Title 18, Section 4244, for psychiatric observation and evaluation of his
mental competency to stand trial. He is charged with conspiracy to possess and
sell cocaine. Mr. Pineros was previously here at the Medical Center from February
23, 1974, to April 25, 1974, under Title 18, Section 4244. At that time the staff
found him to be incompetent for trial.

HOSPITAL COURSE: Since admission Mr. Pineros has behaved in an appropriate manner. He relates well with other patients of Spanish culture. He has engaged in the varied recreational activities provided by the institution and has had no difficulty in conforming with rules and regulations. He has not received any psychotropic medications.

Psychological testing was limited due to the apparent language barrier the patient presented. He was given the Rorschach, Bender-Gestalt and House-Tree-Person tests and was interviewed by Dr. Clifford Whipple, Consulting Psychologist. All of these were accomplished with the aid of an interpreter.

He underwent psychiatric examinations by Dr. Emasue Snow. Her report of October 10, 1974, did not indicate the presence of a psychotic disorder or the presence of a true memory defect.

On October 9, 1974, one day prior to Dr. Snow's dictated psychiatric report, Mr. Pineros was presented to the staff, resulting in the staff opinion that Mr. Pineros presented a language barrier and claimed memory deficit for a period of time, namely, November and December, 1973, and probably due to these things would not be able to or would not assist his attorney and therefore was incompetent. Dr. Snow was present at this staffing.

Following this staffing of October 9, 1974, the staff decided to intensify observation and evaluation. It was discovered that Mr. Pineros' behavior was concise and sharp when in the company of his peers. He spent much time in abstract type games. Classification Form 2-Master



MASTER

MEDICAL CENTER FOR FEDERAL PRISONERS

Springfield, Missouri

SPECIAL PROGRESS REPORT

"O"

Committed Name

PINEROS, Alfonso

Reg. No. 21611-175

Date 11/6/74

- 2 -

. It was only when in the presence of staff members did his behavior become resistant to openness although he was courteous and pleasant. His behavior apparently was a controlled manipulative behavior and he was guarded only when he deemed it important to be so.

Subsequent psychiatric interviews resulted in another psychiatric report by Dr. Frasue Snow on November 6, 1974, reflecting again her opinion of the competency of Mr. Pineros.

Physical examination and laboratory testing have all been within normal limits.

Today the staff interviewed Mr. Pineros at length again through a staff interpreter. The psychiatric staff examination, with all professionals concurring, revealed a unanimous opinion of all those directly involved with his observations and evaluations that the patient is competent, that he understands his charge and that he can assist an attorney in his own defense, if he chooses to do so.

DIAGNOSIS: Personality disorder, antisocial type, moderate.

PECOMMENDATION: It is the opinion of the Forensic Staff Team that this man is mentally competent to stand trial. He may be returned to court.

. . FOR THE STAFF:

Pawnee Creson, R.N., M.S.

Unit Manager, Forensic

Emasur Snow M. D

Emasue Snow, M.D.
Staff Psychiatrist

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UNITED STATES DEPARTMENT OF JUSTIC BUREAU OF PRISONS

MASTER

M. C. F. P.

SPRINGFIELD, MISSOURI

SPECIAL PROGRESS REPORT

Committed Name PIHEROS, Alphonso

21611-175 Reg. No.

Date 11/6/74

ADDENDUM

REPORT OF PSYCHIATRIC EXAMINATION

HOSPITAL COURSE:

This potient was presented at staffing here on October 9, 1974, when he maintained that

'he could not account for his past actions or behavior between the months of November, 1973, until June, 1974, because he had suffered a severe blow to his head in a "mugging" incident in New York City sometime last November. His behavior, mood and affect have remained appropriate throughout his observation here from the time of his readmission, and his responses to questions are relevant, coherent and logical. He denied any complaints of physical or mental symptoms other than his helplessness to explain his involvement in the present charges since he maintained that he was ammesic , for this entire period. In view of his insistence that he lacked all recollection for these past events and his apparent helplessness to comprehend the serious nature of the legal proceedings, the staff reluctantly agreed that Mr. Pincros could not be found competent to stand trial at this time.

Since the last staff presentation, more specific details of the patient's residence and past history were made available to us and he was re-examined privately on several occasions with this information at hand. The result of these interviews show numerous discrepancies in his own prior account which now make it possible to question his truthfulness.

For example, Mr. Pineros previously stated he came to Haw York City in 1972, or 1973, from Colombia to seek work. When we confronted him with information obtained from his fingerprint record, he changed his story and stated he first came to the United States in 1966, with his wife, but he denied that he had ever been arrested before this year. When he was questioned about the discrepancy between the two accounts, he offered as an explanation that he had been "very sick" three menths ago but is now much improved. He offered further history to confirm his assertion that he was mentally ill at that time by stating that he had been hospitalized in Guatemala in 1969, and in Colombia in 1959, but he could not remember the name of the hospital, location of either one, or the duration of treatment. He could however remember that he had first come to live in

Classification Ferm 2-Master Rev. January 1939 UNITED STATES DEPARTMENT OF JUSTICE

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M. C. F. P.

SPRINGFIELD, MISSOURI

SPECIAL PROGRESS REPORT "O"

Committed Name

PINEROS, Alphonso

Reg. No. 21611-175

Date 11/6/74

-2-

New York City in 1969, and worked in a bodega at that time.

He was told that we did not believe he had suffered any head injury such as he had previously described since we vere informed that there were vitnesses who had observed him during the months of November and December, 1973, who saw no physical evidence of serious head injury. He could not explain how he did not require any medical attention for such a severe blow or how his present physical examination showed no evidence of old injury. He simply apolegized for his own ignorance and repeated that he must have been so mentally sick that he was not responsible. In an effort to explain how mentally incompetent he had been, he recalled that there were times during November and December when he tried to enter the wrong dence by mistake. He now recalls that he was living on 110th Street and decitan, between Broadway and Amsterdam Avenues. When we asked if this could have been 109th instead of 110th Street, he explained that he paid rent to a landlady who lived on 109th Street but his room was actually a block further over on 110th Street.

Mr. Pineros denied that he knew his co-defendant, Jacket Rodriquez, whose name was on the indictment, but he could recall having met this individual when they were both in detention at the West Street facility in New York, in January, 1974.

There were many other discrepancies found during these repeated interviews with Mr. Pineros which illustrates that his insistence that he lacks all memory for events prior to June, 1974, is not true. These do not need to be listed in detail here but it is sufficient to conclude that his cooperation has been consciously and deliberately limited and does not show any basic evidence of mental disorder that would impair his ability to assist counsel in his our defense if he so chooses. As a result of these new findings he will again be presented to the staff for further determination of his competency to stand trial.

EMASUE SHOW, M.D. Staff Psychiatrist

Dictated:11/6/74 ES:sb Typed:11/8/74

KINGS COUNTY HOSPITAL CENTER

451 CLARKSON AVENUE, BROOKLYN, N. Y. 11203

February 19, 1975

Hon. Mark A. Costantino United States Eastern District Court 225 Cadman Plaza East Brooklyn, New York Re: Alfonso Pineros

ORDER NO. 74 CR 47

Your Honor:

The patient is a man in his mid-thirties who has been indicted before United States District Court, Eastern District of New York on charges of possession with intent to distribute proximately 1.366 kilograms of cocaine on January 10, 1974.

The following documents have been reviewed: The FBI reports covering the present offense, our report to court of January 25, 1974 and the Springfield reports of April 17, 1974 and November 18, 1974.

When we first examined this defendant 13 months ago he was apparently psychotic and incapacitated, on the ward babbling almost continuously in Spanish and on examination expressing delusions that he was Jesus Christ, that he had already died a few times, that he had lived for hundreds of years and that his mission was to save all the people in jail. In April 1974 Springfield reported him as being still mentally ill and incompetent but in November 1974 they found him fit to proceed. During that second admission, he was at first thought to be incapacitated because of his amnesia for the present offense but ultimately it was concluded that "his insistence that he lacks all memory for events prior to June 1974 is not true," and he was therefore found fit to proceed.

On examination at this time the patient shows no evidence of psychosis or lack of fitness to proceed. He is a very short, lean young man with sharp facial features. He is alert, pleasant and cooperative, almost to the point of being obsequious. He speaks very little English, and the entire examination is conducted with a Spanish-speaking interpreter. The patient's statements are always responsive, coherent and relevant, and there is no evidence of delusions, hallucinations or otherwise disordered thinking. He shows a good deal of emotion as he speaks, frequently twisting his body to emphasize his statements and always showing considerable facial expression.

FEBRUARY 19, 1975

RE: ALFONSO PINEROS

(Cont'd)

The patient himself states that he feels fine. He knows that he is in a hospital but does not know the name. He is not certain of the date but says with reasonably good accuracy that this is the middle of February, 1975. He correctly estimates that he has been here approximately a week and a half or two weeks, that he came here from the West Street Prison where he had been for a month, that before that he had been in the hospital in Springfield, Missouri for about six months, that prior to that he had been in West Street for about two months and that before that he had first been in Springfield for maybe four months.

The patient denies any memory of having been here before or having seen the undersigned. "One day I woke up when I was in Springfield (the first time), and it was like I came out of a dream and I started remembering." When confronted with his psychotic behavior 13 months ago, the patient seems appropriately stunned and shocked. "I can't remember nothing. When I was in West Street, the fellows used to tell me I was really crazy but I can't remember any of those things." When asked if he still thinks that he is God, the patient responds with a long, exaggerated "No" and adds, "God help me."

The patient states that he was born in Bogata, Colombia but he cannot remember the exact date. The best he can say is 1939 or 1941. He says he never had a birthday party, never celebrated his birthday. He grew up in an intact family, with three sisters. He allegedly had 38 half-brothers by his father but none of them ever lived with the patient. His father used to drink a lot and would spend all his money drinking with friends. There was no money to buy school books, and the patient dropped out of school in the third grade. However, he says he can read and write fairly well in Spanish.

In 1961 the patient traveled from Colombia to St. Andres Island, where he met some young fellows who talked him into going to Costa Rica. From there he went to Honduras, where he worked as a waiter in a restaurant. Because he had a tourist visa he could not remain there too long but the owner of the restaurant "got me some papers" which allowed the patient to remain. This restaurant was close to the American borderline and was frequented by a lot of Americans. One day he told a lady that he would like to see America and she got him the necessary papers.

In 1964 the patient came to the United States, where he met a lady from Colombia. He returned there with her, married her in 1965 and subsequently fathered four children.

In 1967 the patient came to Puerto Rico but after a while "got into a jam. A lady had give me a sum of money and I spent it. I had no way of paying her. She got me arrested." After two or three months in in prison the patient was released on bail, following which he fled to Mexico, Los Angeles and then to Colombia.

FEBRUARY 19, 1975

One day, while driving, he looked into the rear view mirror and saw "like spirits following me." Frightened and driving very fast, he ran into a house and suffered fractures of both legs and arms. (His left lower leg is badly scarred on both sides.) He was in the hospital for about five months but when he woke up it seemed like only five days. He insists that he had not been drinking or taking drugs at the time of the accident. Following his release from the hospital he felt like he was in a daze, unable to remember anything. His lady told him that he was acting strangely and took him to some doctors who recommended psychiatric hospitalization. The patient, however, was afraid of the ECT he anticipated receiving in the hospital, refused to enter and left the lady. As a stowaway he went to Ventura, Colombia and then New Orleans. There his thinking became a little bit clearer but he still felt sick.

Either towards the end of 1972 or the beginning of 1973 the patient came to New York. For a while he lived in a hotel but they charged too much. In a restaurant he met a fellow Colombian named Mario Ramirez, who gave him a job in a grocery store in Queens. At the place where he used to eat in Queens he met another man named Ruben, who found him a cheaper room for \$20 a week, a room on the fifth floor at 505 West 110 Street in Manhattan, between Amsterdam Avenue and Broadway.

In regard to the present offense the patient states, "I can't remember why they arrested me or where." He recalls that towards the end of November 1973 he wanted to return to Colombia. He bought a few gifts for his relatives back home and while carrying his packages stopped in a bar for a couple of drinks of whiskey. As he was walking home from the bar, he was attacked by two black men. One grabbed him by the neck, while the other struck him in the stomach. He could feel it when they were going through his pockets. They threw him on the ground and one of them kicked him in the head. "I don't remember anything till I woke up in the hospital," that is, in Springfield.

On questioning the patient says he has no memory of Jorge Rodriguez or Zuniga prior to coming to his senses in Springfield. He says that he subsequently met a Jorge Rodriguez in the West Street jail. "This man told me we got busted together and that we had met in Puerto Rico but I don't know him." When told the specifics of his dealings with the undercover FBI agents on January 9 and 10, 1974, the patient nods and indicates that he understands what is being told to him. When asked about his use of the name Gilberto, he states that his real name is Gilberto Amaya. He knows that in West Street he is called Alfonso Pineros but he cannot understand why. In regard to the specifics of those two days the patient states, "I can't remember none of this."

He goes on to state that in West Street he has had "like a dream that I used to sell meat and that I used to go dancing naked with a lot of women and they used to whip me but nothing like none of the problems I have now." He says his wife would tell him to try to remember and that he has tried very hard but so far with no success.

RE: ALFONSO PINEROS (Cont'd)

FEBRUARY 19, 1975

When confronted with the FBI report that on December 10 and 11, 1973 he negotiated and consumated a \$4,000 sale of cocaine, the patient shrugs. He says he is not questioning what it says in the papers. He recalls that people had told him to make errands. "I don't remember what they was 'cause I was sick. But how can I sell drugs when I have four kids and a wife? I don't want to see any other person's kids on drugs, I don't want to see men on drugs, plus I don't understand what cocaine is for." The patient denies ever using cocaine. He says that he has heard in West Street that "it's to poison people." When told that it makes people high, he responds, "Like to poison people and to kill them slowly. Me having four kids, how can I do that to people?"

When asked if he ever passed bad checks, the patient responds that Ruben used to help him out, because he was doing bad financially, by giving him checks to cash. "He used to give me checks and tell me to go buy a role of Poloroid. So when I come back, I used to give him the change and he used to give me a few dollars." The patient says that he did not know that what he was doing was against the law. When confronted with his statement to the FBI agent, as reported on Page 3 of the December 12, 1973 report, that "his former criminal enterprise was passing illicit checks," the patient responds, "I don't know. I didn't know that was bad. I just seen it look like money."

The patient states that he is currently represented by an English-speaking attorney whose name he cannot recall and who communicates with him via an interpreter. He says the attorney has explained how serious these charges are. He says he does not know the possible term of imprisonment but says he understands when we inform him that he can be sent to jail for many, many years. As far as he knows, he has not been offered an opportunity to plead guilty to reduced charges.

The patient gives a history of two previous arrests. One was in Puerto Rico, as previously described. The other was in New Orleans, when he was accused of not paying for some records he had bought in a record shop; he was released the next day. He has never stood trial but he apparently understands trial procedure when we explain it to him. Asked to explain it back to us, he states, "In this trial there is going to be 12 people who judge me, and there's gonna be people on my behalf. These 12 people will decide innocent or guilty, and the judge will pronounce the sentence." When reminded again that the prosecution will present as witnesses the undercover FBI agents, he assures us that he understands this but adds, "What can I do 'cause I don't remember anything about selling cocaine to these people?"

Towards the end of the examination the patient asks us a favor. He explains that in a recent letter his wife wrote him that he was very, very ill back in Colombia. He states that she had certificates to this effect, which she has sent to his lawyer. The patient asks that we read them but understands and agrees when we explain that it was best that his wife gave them to his lawyer and that we will read them if his lawyer so wishes.

RE: ALFONSO PINEROS (Cont'd)

FEBRUATY 19, 1975

The patient concludes by stating that he wants to be near his kide. He would rather be dead than in prison, he says, so his spirit can be near his children but he denies any suicidal intentions. There are old incision marks on his left wrist and his right forearm but the patient denies any knowledge of how they were sustained and denies any past suicidal gestures or attempts.

DIAGNOSIS: Unspecified Personality Disorder

CONCLUSION: It is my professional opinion that the defendant is not presently insane or otherwise so mentally incompetent so as to be unable to understand the the proceedings against him or to properly assist in his own defense.

COMMENT: We have no opinion as to the authenticity of the patient's amnesia but it is our understanding that amnesia per se does not render a defendant incompetent to stand trial. He knows and understands the charges against him and will be able to appreciate and participate in the proceedings against him.

Respectfully,

DANIEL W. SCHWARTZ, M.D., F.A.P.A.

Assoc. Professor, Psychiatry,

Smil 4. himation

Downstate Medical Center

Director, Forensic Psychiatry Service, Kings County Hospital Center.

DWS/ms

MARIO I. RENDON, M.D. 137 EAST 36 STREET NEW YORK, NEW YORK 10016 TELEPHONE 679-6837 July 23. 1975 Mr. Ira Leitel, Esq. Attorney at Law 188 Montague Street Brooklyn, New York 11201 Dear Mr. Leitel: The following is my statement on Gilberto Amaya, after the examination conducted on July 19th, 1975 and the review of the documents you provided me with. I also enclose my Curriculum Vitae. The patient is a short, light rather pleasant man looking in his thirties who came willingly for interviewing and was courteous and cooperative. He recognized his lawyer but upon my starting to question him he requested of the lawyer that I be identified. After being told that I am a psychiatrist the patient starts to talk spontaneously about how other psychiatrists have not understood him, particularly a female doctor at Springfield who used an incompetent interpreter and then found him competent. The interview was conducted in Spanish and, because of the verbosity of the patient. I had to repeatedly stop him and bring him back to the original question or ask a new question; in other words the patient shows signs of circumstantiality and tangentiality and his verbal production is excessive (logorrhea). Fairly clear communication is only possible by means of my continously structuring the interview. In historical terms the patient identifies himself as Gilberto Amaya, the illegitimate son of Pedro Amaya a carpenter in Bogota, Colombia, who had many women, drank a great deal of liquor and died of "different blood." This last statement could not be clarified by the patient. The father was also a "doctor" (folk doctor) who cured fractures with "vegetable instead of mineral casts". As to his mother, Carmen Contreras, she was originally a peasant and became the last common law wife of Mr. Amaya Sr. She is in her 87's and lives in Bogota. The patient becomes obviously restless while talking about her and he accuses himself of having been "bad" with her but cannot illustrate how. Opposite to previous statements wherein he has given different numbers of siblings, to me he states to have two sisters, Maria Luisa and Aida, who are married and living in Colombia. It is extremely difficult to obtain accurate historical data from this

patient particularly in terms of temporally organizing it. The following is an approximate piecing together of information: Raised by his parents, Mr. Amaya went to gramman school up to the third grade (age nine?) after which he quit and helped his father ("I am a carpenter" he says). He remembers during his youth, a friend called Loco Helio who, used to give him red pills under the effects of which he wanted to die and did inflict cuts to himself. He remembers being in Sibate (which is a mental hospital in Bogota) and also remembers that the ward he was in was called San Camilo. It is very possible from going over the sequence that he gives of his life, that this patient was hospitalized during early adolescence in Sibate Hospital. He also relates to having been a mental patient at La Ortua Hospital (which is a general municipal hospital in Bogota.)

Mr. Amaya states that he was born in 1939 which would make him about 36 years old now. After infancy, schooling, working with his father and being in Sibate Hospital for the first time, he started the life of a vagabond; first moving around different cities in Colombia like Pereira, Cali, Medellin, Bogota, he then went to Venezuela only to come back to Bogota and move in with Yolanda Pena (at about age 19?) an all life peer-neighbor with whom he fathered two children, (today 16 and 14 Freddy and Martha), and who became his common law wis. Mr. Amaya's second round of wandering involved several progressively distant countries and followed a second hospitalization at Sibate when he was around 20: Venezuela, San Andres, Costarica, Honduras, Guatemala and the United States where he came either in 1964 or 1966 according to different versions, the patient being una'te to determine.

Back to Bogota, the patient married his common law wife and since fathered another two children of ages 6 and 5 (Enrique-Adriana). This may have been when he was 26 or 30 according to different versions. To me, the patient stated that he fled from his wife, who had been requested by a doctor to place him in the Mental Hospital again, and as a stowaway came to New Orleans in a ship via Buenaventura, a Colombian port on the Pacific. There is another version of him coming to Puento Rico, being in jail there, then moving to Los Angeles - Mexico - Colombia. There is also a report of him having been in a mental hospital in Guatemala, while to me he stated to have been hospitalized in Venezuela.

Significant medical history reveals the mentioned early use of "red pills" with secondary death wishes and self inflicted cuts. One mental hospitalization at La Ortua, two in Sibate and a possible one in either Venezuela or Guatemala. The patient describes having been administered electroshock treatment and can describe the procedure with a fairly good degree of accuracy. He was given medication in Colombia but does not know what; when asked if it was Largactil (chlorpromazine, thorazine, a drug generally used for the treatment of psychosis), he states it sounds familiar. The patient describes

that on some occasion he believed he was a doctor (like his father) and could operate on himself at which point he inflicted cuts on his left lower extremity. These cuts are quite large and are different from the ones described in a report of a car accident he had in Colombia in 1971.

The last mentioned accident he has described to Dr. Schwartz from Kings County Hospital as due to the belief that spirits were following him. To me he stated that he was told that "death and others" (spirits) were following which prompted him to push the accelerator and crash. He had a head trauma with coma, five days of unconsciousness and subarachnoid hemorrage besides several fractures. Although it is said in the doctor's summary that the post-traumatic syndrome disappeared, a right homonimous hemianopsis (partial blindness) and the suggestion of cortical lesion in the calcarine area of the brain were never completely cleared up and had not been, to my knowledge, re-evaluated since. The accident took place on 5-21-71 and psychiatric follow up was recommended at that point.

Reproduction of an official document from the Department of Forensice Medicine in Bogota Colombia dated 12-18-71 states that the patient presents symptoms of mental illness reason why he requires psychiatric observation, study and treatment. It also states that "this is a consequence of lesions suffered in his head on September 8, 1971". If this is correct, the patient had a second head trauma after the one described above with a stated incapacity of 90 days.

The information Mr. Amaya gives in relation to his whereabouts since he last came to the U.S. seems rather congruous in different instances and this includes his amnesia for the events leading to his arrest and the period of time thereafter. During his hospitalization at Kings County the patient was definitely psychotic as revealed by Dr. Schwartz' description. Dr. Schwartz raised the question of prognosis at a point when he did not have available the information that is present now. According to the present data I tend to believe that Mr. Amaya has a chronic scrious mental disturbance of fluctuating severity, perhaps a psychosis which has responded to medical treatment and has relapsed several times.

My findings at the present examination are as follows: 1) A history of mental disturbance probably from adolescence. 2) A number of what seems psychotic episodes. 3) Residual signs of psychosis at present. These are: A) Circumstantiality and tangentiality of thinking; B) Overproductiveness and rambling; C) Descriptions of true auditory and visual hallucinations in the past; D) Idiosynchatic thinking i.e. when formally asked - How do you do? He says: "I have to say well because I don't want to curse my day." At another point during the interview he states: "I don't mind to die; I'll pay the government with my body and I know that my spirit would become either a stork or a fish. Even if I am a fish I could be close to my children

and maybe I could even feed with fish!" E) Delusional belief, i.e. "My children come to visit every night and I talk to them, if not, my spirit goes there". F) I found no recent memory impairment but for remote events there is a definite memory lag: Date of birth, marriage, age of first hospitalization etc. etc. When asked his children's names Mr. Amaya initially stated not to remember them and it was only after painstaking slow ranking of them that he gave the names and ages. G) There are multiple incongruencies in Mr. Amaya's different accounts of his life. This could be interpreted in two ways: Either Mr. Amaya is deliberately lying or he is confabulating in thying to piece together fragments of recollection of his experiences. I tend to lean toward the second possibility, because most of the incongruities are nonsensical in terms of his present situation and do not seem aimed at ameliorating it. HI Mr. Amaya's judgement has been very poor. He either withheld or forgot information which for anyone would be first choice in terms of rationalizing his delinquent behavior i.e. the car accident in Colombia. It is only as of late, and apparently through his wife that this information became available; this is also true for very significant facts of multiple hospitalizations for mental illness and Electro convulsive therapy. During the present examination Mr. Amaya was able to interpret Spanish proverbs correctly and he also did serial sevens perfeetly well. His drawings seemed to me rather unrevealing.

As far as competency to stand trial, I agree with previous psychiatrists that Mr. Amaya is competent at the time of the interview. It has to be considered that this is after several months of having been under treatment with antipsychotic medication. My diagnostic impression at present is Residual Schizophrenia in a man who has probably had a Chronic Schizophrenic process. In reviewing transcripts of his conversations with undercover agents, I find that his communication, when intelligible, has gross deficits of the kind exhibited frequently by schizophrenic patients: 1) Ambivalent statements, i.e. "Yes, much problems no". 2) Pronominal reversals:

-"To much problems for me you got too much babies"

-"You got a what?"

-"Me got a too much babies". 3) Clang associations: "I don't know, you know know you too much you... (inaudible)... nothing not now your friend now I don't know, no? You and Vinny all right with problem now." 4) Echolalia (Frequent repetation of the last word of the interlocutor) 5) Perseveration i.e. "Ah six, yes, yes, yes, yes, yes, yes" 6) There are many examples of inappropriate shift of subject and what could be considered loose associations - In summary there is a pervading difficulty in communication such as is frequently seen in schizophrenic patients.

In summary, it is my opinion, after comparing the conversation transcripts of four different persons, that Mr. Amaya's language reveals substantial impairment of thinking which cannot be explained only on the basis of lack of command of the English language.

If you have any further questions please don't hesitate to call me.

Sincerely yours,

Mario Rendon, M.D.

MR: jah Encl.